Ministry of Justice

HM Prison & Probation Service

Policy name: Prisoner Discipline Procedures (Adjudications) Policy Framework

Reference: N/A

Issue Date: 13 May 2024 **Implementation Date**: 31 May 2024

Replaces the following documents (e.g., PSIs, PSOs, Custodial Service Specs) which are hereby cancelled:

PSI 47/2011.

Prisoner Discipline and Segregation Service Specification – Prisoner Discipline Procedures; Outputs 1-11.

Where a prisoner has been charged and/or an adjudication hearing has begun before the implementation date of this Policy Framework it must be completed according to the procedures set out in PSI 05/2018. This Policy Framework replaces PSI 05/2018 for any adjudications begun on or after the implementation date must be completed in compliance with this Policy Framework. Please see Annex B for a list of the main amendments.

Introduces amendments to the following documents:

- Incentives Policy Framework

Action required by:

X	HMPPS HQ	X	Governors
X	Public Sector Prisons	X	Heads of Group
X	Contracted Prisons	X	The Probation Service
X	Under 18 Young Offender Institutions		Other providers of Probation and Community Services
X	HMPPS Rehabilitation Contract Services Team		

Mandatory Actions: All groups referenced above must adhere to the Requirements section of this Policy Framework, which contains all mandatory actions.

For Information: Governors must ensure that any new local policies that they develop because of this Policy Framework are compliant with relevant legislation, including the Public Sector Equality Duty (Equality Act, 2010).

Section 6 of the Policy Framework contains guidance to implement the mandatory requirements set out in Section 4 of this Policy Framework. Whilst this guidance in Section 6 will not all be mandatory, clear reasons to depart from the guidance should be documented locally. Any questions concerning deviation from the guidance can be sent to the contact details below.

Any reference to the 'Governor' in this Policy Framework includes any Director of a contract managed prison and any reference to 'Prison Group Director' (PGD) includes the Deputy Director of

contracted custodial services in the case of any contract managed establishment. The term 'governor' also includes delegated functional head in public sector and contracted prisons.

This Policy Framework applies to adult prisoners and to children held in custody in Young Offender Institutions (YOIs). For the purposes of this Policy Framework, the term 'prisoner' in the Guidance, applies to both adults and children (under 18's). The term 'Governor' applies to the Governing Governor.

How will this Policy Framework be audited or monitored: Mandatory elements of this Policy Framework should be subject to local management checks and may be subject to self or peer audit by operational line management/HQ managers, as judged to be appropriate by the managers with responsibility for delivery. Governors must ensure that decisions on whether a charge is laid are exercised fairly, consistently across cases and without discrimination or bias through regular audit of adjudications.

Some elements of this Policy Framework will be subject to quality assurance checks as part of the Safety audit by the Performance, Assurance and Risk Group.

In public prisons and YOIs, PGDs will monitor compliance with requirements set out within the Policy Framework in their prisons. In contracted prisons monitoring of compliance will be through the standard contract management processes.

Resource Impact: This Adjudications Policy Framework replaces Prison Service Instruction (PSI) 05/2018 Prisoner Discipline Procedures (Adjudications). It also provides updates relevant to a number of policies. Therefore, many of the mandatory requirements are not new. There are new requirements that impact on resources, specifically in relation to rehabilitative adjudications. However, much of the resourcing impact will be offset by efficiencies introduced through the introduction of virtual independent adjudications and the new digital adjudication service on Digital Prison Services (DPS). Governors will need to ensure that old policy documents are replaced and staff are briefed on the new instructions and guidance. Prisoners and children in under 18 YOIs should be informed of the new Policy Framework and given access on request – a copy must be placed in the library. Prisoner induction materials will also need to be updated. The adjudications training courses for new staff, Adjudication Liaison Officers (ALOs) and governors will be updated in due course. Local punishment guidelines will need to be updated. A more detailed resource impact assessment accompanies this Policy Framework.

Contact:

- For policy enquiries: operational_policy1@justice.gov.uk
- For enquiries about the administration of independent adjudications: gl-ind.adjudication@justice.gov.uk

Deputy/Group Director sign-off: Rachel Pascual, Deputy Director, Prison Policy and Tim Allen, Prison Group Director.

Approved by OPS for publication: Helen Judge and Kim Thornden-Edwards, Joint Chairs, Operational Policy Sub-board, April 2024.

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1. Purpose

1.1 Adjudications are the procedures by which offences against the Prison or YOI Rules allegedly been committed by prisoners and children in the under 18 YOIs are dealt with. The adjudication system sets out how prisoners and children are charged with offences, the procedure for inquiring into the charge to determine the accused prisoner's or child's guilt or innocence, including their right to a defence, the punishments for those found guilty, and their right to apply for a review.

1.2 This Policy Framework provides guidance to prison staff and under 18 YOI staff on adjudication procedures. It introduces new policy following amendments to the Prison and YOI Rules in 2024. This includes new disciplinary charges aligning with the Equality Act 2010 to deal with offences motivated by hostility towards a wider set of protected characteristics, and new offences to deal with sexually inappropriate behaviours. This also introduces new rehabilitative options for governors including payback punishment or suspended punishments with the condition that a rehabilitative activity is completed. A new offence of not complying with payback punishment has also been introduced. Other policy updates have also been made and Annex B provides a list of the main amendments.

1.3 The aims of the policy are:

- The use of authority in the establishment is proportionate, lawful, transparent, and fair.
- A safe, ordered, decent and secure prison is maintained.
- Prisoners and children understand that there are consequences to their behaviour and there are discretionary options to support prisoners and children to change their behaviour by addressing the root cause(s) of their rule breaking and encourage prosocial behaviour.
- Adjudications incorporate the principles of procedural justice, supporting prisoners' and children's behaviour change taking into account their individual differences and needs, contributing to better outcomes (rehabilitation) post-release.
- Crimes and serious rule breaking are punished including offences of violence, drugs, weapons, or other forbidden items, by ensuring that they are dealt with by the right part of the system.

1.4 The decision whether to lay a disciplinary charge is a discretion, not a duty, and this discretion has to be exercised fairly and be a proportionate response to the offending behaviour. The disciplinary system may not be a suitable tool of punishment for behaviours associated with mental illness, and alternative responses to the behaviour (other than laying a charge) must always be fully considered prior to proceeding with a charge.

1.5 Staff should consider less formal measures in dealing with minor infringements of Prison Rules, such as Five-Minute Intervention (FMI) and informal conflict resolution techniques. Within under 18 YOIs, those less formal mechanisms may include the Custody Support Plan (CUSP) and or engaging the child in restorative practice via the Conflict Resolution model. The incentives scheme can also be used as a tool to manage low level misconduct by considering patterns of behaviour which could lead to moving down an incentive level.

1.6 Incentive levels are determined by patterns of behaviour, personal progress and engagement with the prison/YOI regime and sentence plan targets. Whereas the adjudication process helps to maintain order and discipline within a prison by awarding punishments for breaches

of the Rules. There may be occasions when behaviour results in both a disciplinary punishment for a specific act and a review and downgrading of incentive privilege level because a prisoner's behaviour falls significantly below expected standards. Adjudicating governors should consider requesting a review of any incentives action where a prisoner is found not guilty at an adjudication in relation to the same incident. Each case should be considered on its individual merits and in line with the Incentives Policy Framework.

1.7 In establishments holding children and adults under 21 the Governor may choose to operate a minor reports system. Minor reports are a form of adjudication used to deal with lesser offences by children and adults under 21 in YOIs. Since one of the benefits of minor reports is swift justice, the system must operate to provide a hearing within 48 hours of the alleged offence. All Prison and YOI Rules and safeguards relating to adjudications apply equally to minor reports, and all charges and punishments must be within the Rules (see paragraphs 6.190-6.198).

1.8 Adjudications are inquisitorial rather than adversarial – i.e. the role of the adjudicator is to inquire impartially into the facts of the case, hearing evidence from the reporting officer, the accused prisoner and any witnesses, and taking into account any written or other physical evidence (e.g., witness statements, Mandatory Drug Testing (MDT) reports, Closed Circuit TV (CCTV)/PIN phone/Body Worn Video Camera (BWVC) recordings, items alleged to have been found, etc.). The adjudicator then weighs up all the evidence and decides whether or not the charge has been proved beyond reasonable doubt, and if proved, what the appropriate punishment should be. The adjudicator will dismiss the charge if not satisfied that it has been proved beyond reasonable doubt. Adjudications are not a competition between two opposing sides, so there should not normally be any need for legal representation of the reporting officer (who is a witness, not a prosecutor) at the hearing.

1.9 Adjudication hearings present an opportunity for governors to identify whether a prisoner or child has any underlying behavioural or support needs which are influencing or linked factors in them committing an offence, and which may be supported or addressed through payback punishment or a rehabilitative activity condition. It is a local decision for each establishment whether to implement and offer these two rehabilitative options; they are not mandatory but prisons utilising these options should adhere to the guidance provided.

1.10 The policy is informed by significant adjudication case law from European Court judgements and judicial reviews.

1.11 This Policy Framework applies to all staff who have contact with prisoners or children in under 18 YOIs and who carry out adjudication procedures. This Policy Framework also applies to immigration detainees and foreign national prisoners held within the prison estate. It equally applies to children and adults accommodated within YOIs and in the adult estate.

2. Evidence

2.1 Punishment is an important part of how society works may be required for a number of good reasons. However, extensive research on punishment suggests that the Criminal Justice System rarely meets the complex conditions necessary to deter/suppress antisocial behaviour. On its own, punishment does not tend to bring positive, sustained behavioural changes. Further, research shows that there may also be unintentional consequences of using punishment which can worsen the situation (increase rule breaking and criminal behaviour)[1].

2.2 Evidence points to several ways of improving the effectiveness of prisoner disciplinary procedures and outcomes. These are not at odds with using punishment when someone breaks rules; they can, and should, be used at the same time. They include how fairly procedures are seen to be implemented[2], carefully considering the type of award/sanction given[3456], positively reinforcing desirable behaviours and helping people to learn and strengthen prosocial behaviours and thinking skills (e.g., problem-solving, consequential thinking, emotion management, impulse control). Moreover, good quality research tells us that following the principles of effective behaviour management provides the necessary conditions to positively influence behaviour change, and increase compliance with rules; through building capability, boosting motivation, and creating opportunities.[78]

2.3 Robust research on the impact of procedural justice shows that when people feel processes (and how decisions are made, rather than what decision is made) are applied fairly, they see authority figures as being more legitimate, and they have more confidence and trust in them[9]. As a result, they are more likely to comply and cooperate with authorities, and accept decisions that have been made, even if the outcome of decisions is not in their favour. Increased prisoner perceptions of procedural justice predict significantly less misconduct and violence, and better psychological health in custody and lower rates of reoffending after release. Research shows prison misconduct is a reliable predictor of recidivism after release[10]. Further, robust evidence indicates that behaviour change is more likely to occur when the drivers of misconduct are understood and tackled, and opportunities for 'teaching moments' are utilised to develop prisoners' awareness, understanding, and skills development[111213].

2.4 In HMPPS trials where procedural justice principles and rehabilitative skills (FMI skills) have been used more frequently by governors during adjudication hearings, prisoner perceptions

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[1] Evidence-Based Practice Team (2018). *Evidence Summary: Does Punishment Change Behaviour?* HMPPS.
[2] Evidence-Based Practice Team (2023). *Evidence Summary: Procedural Justice Perceptions.* HMPPS.
[3] Evidence-Based Practice Team (2018). *Evidence Summary: Does Punishment Change Behaviour?* HMPPS.
[4] Bonta, J., & Andrews, D. A. (2007). *Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation 2007-06*. Public Safety Canada.
[5] Gendreau, P., Listwan, S. J., Kuhns, J. B., & Exum, M. L. (2014). Making prisoners accountable: Are contingency management programmes the answer? *Criminal Justice and Behavior, 41*, 1079 – 1102.
[6] French, S., & Grendreau, P. (2006). Reducing Prison Misconducts what works. *Criminal Justice and Behavior, 33*, 185-218. 8
[7] Evidence-Based Practice Team (2019). *Evidence Summary: Behaviour Management in schools*. HMPPS.
[8] Evidence can be condensed into six principles of good behavioural support including 1, Getting ahead of the problem 2, Encourage, create opportunities for, and reinforce behaviour you want to see, 3, Target and respond to the needs of those who need the most help with their behaviour, 4, Ensure consistency and fairness in application of rewards and sanction, 5, Work on building positive relationships with authority and 6, Take a whole establishment approach to supporting good behaviour.
[9] Evidence-Based Practice Summary (2023). *Evidence Summary: Procedural Justice Perceptions*. HMPPS.
[10] Cochran, J. C., Mears, D. P., Bales, W. D., & Stewart, E. A. (2014). Does inmate behavior affect post-release offending? Investigating the misconduct-recidivism relationship among youth and adults. *Justice Quarterly, 31*, 1044–1073.
[11] See Evidence-Based Practice Team (2018). *Evidence Summary: Does Punishment Change Behaviour?* HMPPS.
[12] Fitzalan Howard, F., & Wakeling, H. (2021): The experience of delivering 'Rehabilitative Adjudications' in English prisons. *Psychology, Crime & Law, 27, 831-848*
[13] Fitzalan Howard, F., & Wakeling, H. (2020). Evaluating the impact of 'rehabilitative adjudications' in four English prisons. *Psychology, Crime & Law, 27, 1010-1031*

of procedural justice and intention to comply with the rules increased[14]. It would be good practice for governors to use rehabilitative skills and procedural justice principles in their adjudication practice, to improve prisoners' perceptions of fairness, intent to comply with the rules and positively influence their behaviour, thinking, and attitudes. On its own, this approach (called 'rehabilitative adjudications') is not likely to be enough to completely change rule-breaking behaviour, but it is one part of how we can improve the impact of this disciplinary procedure, and contribute towards overall better relationships, conduct, and safety in prisons. Governors have also been positive about these rehabilitative adjudications approach, believing this to be more constructive, meaningful, and worthwhile as it modelled commitment to rehabilitation and fairness.

2.5 Research examining custodial misconduct dealt with through disciplinary adjudications has found that people engaged in adjudication hearings are likely to be vulnerable, at increased risk of reoffending, and have high and prevalent criminogenic needs and responsivity factors[15]. The likelihood of further proven misconduct appears greater for people who are younger; are at higher risk of violent or general reoffending after release; are at higher risk of using violence in custody; have responsivity factors (learning disability or challenges (LDC), and mental health difficulties); have a higher rate of prior proven adjudications; and are breaking prison rules related to wilful damage, disobedience or disrespect, or those categorised as 'other'. The nature and type of award/sanction that people receive from proven adjudications appears to influence the likelihood of their subsequent misconduct. Suspended awards were associated with statistically significantly lower propensity for further rule breaking than immediately activated ones. Further, in comparison with forfeiture of privileges, cellular confinement (CC) is associated with significantly higher likelihood of repeat rule breaking and cautions associated with significantly lower likelihood. People who receive additional days in custody, other sanctions, or stoppage of earnings seem to fare no differently from those forfeiting their privileges. Additionally, research shows that the punishment must immediately follow the behaviour it intends to suppress[16]. The prisoner discipline procedures provide strict legislative time limits for laying charges and opening hearings to ensure relatively swift and fair outcomes.

2.6 In addition to considering what/how punishments are awarded, evidence suggests that more constructive options be considered. There is good evidence that activities that enable people to 'do good' have the potential to make a difference to their well-being and to help them to behave more prosocially[17]. There are a number of factors that influence engagement in such activities, including the activity being perceived as useful and rewarding, and that they enable opportunities to develop meaningful skills.

2.7 In summary, the evidence-base suggests that to achieve better outcomes, disciplinary adjudications should:

- Incorporate rehabilitative skills to help develop or reinforce prosocial behaviour, thinking skills, and attitudes.

[14] Fitzalan Howard, F., & Wakeling, H. (2021). *Evaluating 'rehabilitative adjudications' in four English prisons*. Ministry of Justice.
[15] Fortescue, B., Fitzalan Howard, F., Howard, P., Kelly, G., & Elwan, M. (2021). *Examining the impact of sanctions on custodial misconduct following disciplinary adjudications*. Ministry of Justice.
[16] See Evidence-Based Practice Team (2018). *Evidence Summary: Does Punishment Change Behaviour?* HMPPS.

[17] Evidence-Based Practice Team (2018). *Evidence Summary: Do Good, Be Good Activities*. HMPPS.

- Incorporate the principles of procedural justice, to help increase perceptions of legitimacy, trust, and from this greater increase commitment to comply with prison rules.
- Consider and provide additional support when needed in relation to responsivity factors such as psychosocial immaturity, LDC, and mental health difficulties.
- Offer (where possible) rehabilitative opportunities that are tailored to the individual and proportionate to their risk, need and responsivity factors, to develop prisoners' awareness, understanding, and missing skills.
- Consider the use of 'do good, be good' activities where possible, ensuring they are perceived to be useful and rewarding and provide opportunity for meaningful skill development.
- Where rehabilitative opportunities are available, they should be considered instead of traditional punitive punishments along with suspending issued punishments as evidence shows this may be more effective to change behaviour.
- Take an institution-wide approach, with a consistent set of standards of behaviour, follow the principles of effective behaviour management to create the conditions most likely to increase desirable behaviours and reduce unhelpful behaviours.

3. Outcomes

- Prisons and YOIs understand the guidance to enable alleged offences against Prison and YOI Rules to be reported.
- Prisoners and children understand the initial charges laid against them.
- Prisoners have access to further information and receive necessary support to understand the adjudication process.
- Prisons and YOIs understand that hearings must be scheduled within correct timescales and staff and prisoners/children understand their requirement to attend scheduled adjudication hearings.
- Prisoners and children have access to further information and receive necessary support during and after the hearing to ensure they perceive the process to be fair.
- Prisons and YOIs understand the importance of ensuring that adjudication outcomes are fair, safe, and proportionate to the charge.
- Prisoners and children understand the consequences of their behaviour and where appropriate, are offered rehabilitative options aimed at addressing the root cause(s) of their misbehaviour.
- Prisoners and children understand the outcome of the adjudication and the review process, if necessary.
- Prisoners and children pay compensation for any damage they have caused to prisons or to prison property, where relevant.
- All relevant departments are aware of and, where necessary, act on the outcome of the hearing.
- Eligible prisoners and children are aware of and are able to apply for remission of additional days.

4. Requirements

4.1 The Prison Rules 1999 and the Young Offender Institution Rules 2000 – The Prison and YOI Rules are statutory instruments (i.e., law) made by the Secretary of State under power given to him by section 47 of the Prison Act 1952 and set out the basics of how establishments are to be run, including disciplinary procedures. Amendments to the Rules may be made from time to time, with the approval of Parliament.

Legal requirements – Prison Rules (PRs) and YOI Rules (YOIRs)

4.2 The following table sets out the PRs and YOIRs relevant to the prisoner discipline procedures and provides the authority on the processes that must be followed for adjudications.

Prison Rule number	YOI Rule number	Description – further information and guidance
Offences against discipline		
51	55	Sets out the offences that someone can be found guilty of.
Interpretation of rule 51/55		
51A	57	Provides further guidance on the definition of offences against discipline motivated by hostility towards a person's protected characteristic/s.
Defences to rule 51(9)/55(10)		
52	56	Sets out potential defences to the offence of being found with any substance in their urine which demonstrates that a controlled drug or specified drug has been taken.
Defences to rule 51(10) and 51(11)/55(11) and 55(12)		
52A	56A	Sets out potential defences to the offences of consuming alcohol and being intoxicated as a result of consuming alcohol.
Disciplinary charges		
53	58	Sets out the initial process and timescales for laying a charge and holding a hearing.
Determination of mode of inquiry		
53A	58A	Sets out the processes and timescale of the governor assessing the seriousness of a charge and deciding whether to deal with it themselves or refer to an Independent Adjudicator (IA) for a punishment of additional days in custody if found guilty or if it is necessary or expedient for some other reason to refer the charge. Also sets out the criteria and process for an IA to refer a case back to the governor for review (for police referral) or to consider themselves where it does not meet the seriousness threshold and the circumstances for re-referral to an IA.
Rights of prisoners/inmates charged		
54	59	Sets out a prisoner's entitlements during the adjudication process including when they are informed of a charge, their right to hear and present their case and to have a legal representative at an independent adjudication.
Governor's punishments		
55	60	Sets out the punishments a governor can give when a prisoner is found guilty of an offence against discipline, the rules on consecutive punishments and limits to imposing caution and CC.
Adjudicator's punishments		
55A	60A	Sets out that if a prisoner is found guilty of an offence against discipline, an IA can impose any punishment a governor can give (with the exception of payback punishment), as well as up to 42 added days; the

		rules on consecutive punishments and limits to imposing caution and CC in custody.
Requirement to pay for damage to prison/young offender institution property		
55AB	60AB	Gives the governor or IA discretion to impose a requirement for prisoners to pay for destroying or damaging any part of a prison/YOI or any other property belonging to a prison/YOI, and to consider the proportion of the cost to set the requirement at. The award must be made only following a finding of guilt for a charge under PR 51 (17) or 51 (17A) or YOI R 55 (18) or 55 (19) which involves the destruction of or damage to any part of a prison or prison property, including damage or destruction aggravated by a person's protected characteristic, and may include the cost of labour to put it right.
Review of adjudicator's punishment		
55B	60B	Describes the review process for a punishment given by an IA. Also allows for the appeal part of the process to encompass the award for recovery of monies for the destruction or damage caused. See paragraphs 6.211-6.217 for further guidance.
Offences committed by a young person		
57	n/a	Sets out the slightly different maximum punishments that can be imposed on a prisoner who was under 21 at the time the offence was committed regarding privileges, earnings, CC and removal from cell, and ensures that punishments imposed on offenders before their 'starring up' that have not been exhausted or remitted continue to have effect after their 'starring up'.
Cellular confinement/confinement to a cell or room		
58	61	The medical considerations that an adjudicator must take into account before a punishment of CC is imposed
Prospective award of additional days		
59	n/a	Explains that a punishment of additional days can be imposed on a prisoner on remand and when it can come into effect.
Removal from a cell or a living unit/wing or living unit		
59A	62	Sets out where a prisoner can be located and the restrictions to earnings and activities following a punishment of removal from a cell or living unit.
Suspended punishments		
60	63	Sets out the process for a governor or IA to give a suspended punishment, including for governors only where prisoners can be offered the chance to engage with a rehabilitative activity to address their behavioural or support needs. It also sets out the options available if the conditions are breached.
Remission and mitigation of punishments, variation of compensation requirements and quashing of findings of guilt/remission and mitigation of punishments and quashing of findings of guilt		
61	64	Describes that a punishment imposed by a governor can be remitted, changed, or quashed and that a system must be in place (for eligible prisoners to apply for) for added days to be remitted or mitigated by a governor for good behaviour. Where a compensation requirement has been imposed, this can be reduced.
Enforcement of compensation requirements		
61A	64A	Provides Governors with the power to take money directly from prisoners' prison accounts to satisfy compensation requirements imposed in relation to damage caused to prison property and sets a limit on that recovery of monies.

		The power can be exercised only following a finding of guilt on an adjudication concerning destruction of or damage to prison property and only where the Adjudicator has made a specific award requiring the prisoner to pay for the damage.
Adult female inmates: disciplinary punishments		
n/a	65	Sets out that the punishments under YOI Rule 60 does not apply to adult women prisoners who are held in a YOI and charged under the YOI Rules, and instead equivalent punishments to the Prison Rules 1999 apply.
Delegation by governor		
81	85	Sets out that the Governor can delegate their duties to other members of staff. This includes the conduct of adjudications and related duties (such as considering requests for remission of additional days) to any other officer of the establishment.

Public Sector Equality Duty

4.3 We deliver our services fairly and respond to individual needs insisting on respectful and decent behaviour from staff and prisoners/children. We recognise that discrimination, harassment, victimisation, and bullying can nevertheless occur. Governors will take appropriate action through adjudication reviews whenever we discover them. We make daily decisions based on our own understanding of what, to us, is the correct outcome. There is a duty for all staff not to be biased or have the appearance of bias when dealing with any prisoner or child. These decisions may have a detrimental impact on individuals with a protected characteristic. As part of HMPPS' responsibility under the Public Sector Equality Duty, due regard must be given, when exercising functions, to a) the need to eliminate discrimination, harassment and victimisation; b) advance equality of opportunity between people who share a relevant protected characteristic and those who do not; and c) foster good relations between people who share a relevant protected characteristic and those who do not. See PSI 32/2011 Ensuring Equality.

Other requirements

4.4 The following section sets out the other requirements that governors must ensure are followed. Safer custody, decency and equality must be regarded as high priority issues at all times and are particularly relevant to implementation of prisoner discipline procedures.

Conduct of adjudications and authority to adjudicate

4.5 Under PR 81/YOI R 85 Governors may delegate the conduct of adjudications and related duties (such as considering requests for remission of additional days) to any other officer of the prison or YOI. In practice this means delegation to any operational manager grade at a minimum level of Band 7, or equivalent in contracted prisons. Adjudicating governors must have suitable operational experience and pass the Adjudications training provided by Training Services, or the equivalent training provided for staff of contracted prisons.

4.6 Governors must ensure that all staff employed on adjudication duties (including opening and adjourning hearings) are properly trained and competent to carry out these procedures in accordance with the requirements of this policy, appointing suitable staff and arranging authorised training as necessary.

4.7 Establishments must have an ALO, who has passed the ALO training provided by Training Services, and whose role is, to advise staff on whether a disciplinary charge might be an appropriate response to an incident involving a prisoner or child, and if so what charge to lay. ALOs can accept or reject charges that have been recorded on DPS. Where information is

incomplete or incorrect, the ALO can return the report back to the reporting officer to edit before a hearing is scheduled. Where the wrong charge has been used, the ALO can amend the charge without returning this to the reporting officer. However, if the ALO considers that a charge has been laid inappropriately, they should discuss this with the reporting officer to agree the approach before taking any action. All staff employed on adjudication duties must be familiar with the requirements and the supporting guidance provided in sections 4-7 of this Policy Framework.

4.8 In establishments operating a minor reports system, the Governor may delegate these hearings to Supervising Officers (at a minimum) who are trained and competent (or the equivalent in contracted prisons) who have passed the minor reports course.

4.9 In contracted prisons Directors may delegate adjudications to suitably trained and operationally experienced members of staff, senior enough to be left in charge of the establishment in the Director's absence. Controllers of contracted prisons retain the authority to conduct adjudications but are not expected to do so routinely.

4.10 IAs are District Judges or Deputy District Judges approved by the Lord Chancellor for the purpose of inquiring into charges referred to them. It is important that they are always treated with respect and courtesy, and addressed by their title and surname, not their first name. Their training is a matter for the Senior District Judge (Chief Magistrate) at the City of Westminster Magistrates' Court.

Timescales for laying charges and opening a hearing, and rights of prisoners charged

Status of accused	Designation of accommodation	Rules applicable to charging	Rules applicable to punishment
Adult, male & female	Prison	PR 51	PR 55
Adult (21 or over) female	YOI	YOI R 55	YOI R 65
YO (u21) sentenced to detention in YOI or Secretary of State (SoS) has directed they be held in a YOI	YOI or dual designated YOI/prison	YOI R 55	YOI R 60
YO (u21 sentenced where SoS has directed they be held in prison)	Prison	PR 51	PR 57
YO (u21) convicted but unsentenced	Prison	PR 51	PR 57
YO (u21) on remand (unconvicted)	Prison	PR 51	PR 57

Prison Rule = PR, YOI R = Young Offender Institution Rules, YO = Young Offender

4.11 Charges alleging a disciplinary offence must be in accordance with the offences listed in paragraph 51 of the Prison Rules or paragraph 55 of the YOI Rules (see Section 7). The YOI Rules apply to prisoners and children who have been convicted and sentenced to custody in a young offender institution, to prisoners while they are held in a YOI, and to adult (over 21) female prisoners held in a YOI. In all other cases (adult prisoners held in prison and young offenders not yet sentenced) the Prison Rules apply. The table below shows which Rules to apply for charging and punishments, according to prisoners' age and gender, and the type of accommodation they are held in.

4.12 If a charge is to be laid, the reporting officer must complete a notice of report giving details of the accused prisoner/child, the charge and relevant Prison or YOI Rule, and the

arrangements for the hearing. The notice of report must describe the incident which led to the charge in enough detail to enable the accused prisoner/child to understand what is alleged and be able to discuss their account of the event during the adjudication (see guidance on describing video evidence in paragraph 6.44). The reporting officer must log the charge on DPS. Their login ID will count as their electronic signature and the date entered will be the date of the notice of report (see paragraphs 6.1 and 6.97 on hearsay evidence).

4.13 The charge is laid when the completed notice of report is issued to the prisoner/child. Charges must be laid on the prisoner/child as soon as possible and, other than in exceptional circumstances, within 48 hours of the discovery of the alleged offence. This time limit is strict and must not be extended for reasons such as absence of the reporting officer or the prisoner's/child's attendance at court (which are not uncommon occurrences within prison), but only for exceptional reasons. The issuing officer must log the time and date of issue on DPS on the notice of report. Their login ID will count as their electronic signature and the date entered will be the date the notice of report was issued to the prisoner/child to ensure there is a digital record. The time and date the case is to be heard by must also be recorded clearly. A copy must be retained in the prisoner's record, in line with records retention requirements set out in PSI 04/2018 Records, Information Management and Retention Policy.

4.14 The prisoner/child must be given a written (and, if necessary, oral) explanation of the adjudication procedure, so that they understand what will happen to them, by issuing the Prisoner Adjudication Information Sheet and Prisoner's Statement – Form DIS2, and this must be recorded with their response on the notice of report (see paragraph 6.42). An Easy Read version of this form should also be given to the prisoner/child, where necessary. Use of an interpreter and/or extra support provided for identified learning needs must be employed where necessary to ensure that the prisoner/child fully understands the charge and process.

4.15 The prisoner/child must be allowed at least two hours before the initial hearing is scheduled so that they have sufficient time to prepare a defence to the charge. Prisoners and children must be made aware of this Policy Framework including through induction materials. Governors must ensure that sufficient copies are available for consultation and in the library, with prisoners and children given access to a copy and other documents and reference books available in the prison library. Hearings must continue when a prisoner or child transfers to another prison or YOI (see paragraph 6.29 for further guidance). See paragraph 6.1 for further guidance on who can lay the charge.

4.16 Save in exceptional circumstances, the adjudication hearing must then be opened by an adjudicating governor, on the following day, unless that day is a Sunday or public holiday – in which case the opening of the hearing may be delayed until the next working day. The accused prisoner/child, the reporting officer, and any other witnesses must be informed that they are required to attend the hearing and when and where it will take place, (but the hearing may proceed in the prisoner's/child's absence – see paragraphs 6.32-6.35 for further guidance).

4.17 The 'following day' does not mean within 24 hours – the opening of the hearing will still be in time as long as it takes place before the end of the day (or next working day) after the charge is laid. Where a case is referred to an IA see paragraphs 6.61-6.66.

4.18 The prisoner/child has the right to present their case, call witnesses and request legal advice or legal representation. Definitions of legal advice and legal representation are provided at paragraphs 4.20-4.23 below.

4.19 Prisoners and children are automatically entitled to be legally represented at hearings by IAs if they wish. However, following the Tarrant case law (R. v Secretary of State for the Home Department Ex p. Tarrant [1985] Q.B. 251) laid down by the Divisional Court in 1984, governors must apply the 'Tarrant Principles' when considering requests for legal representation or a McKenzie friend for prisoners/children at governor hearings – see paragraph 4.23 below. Virtual invitations/links for IA hearings must be sent to the IA and legal representative separately (see paragraph 6.77 for more information on this process).

Requests for legal advice at governor hearings

4.20 Legal advice is where the prisoner or child contacts their solicitor outside of the hearing, but represents themselves in the absence of the solicitor. If, during the initial hearing, the accused prisoner or child requests an opportunity to consult a solicitor for legal advice (not representation) before the hearing, the governor must adjourn the hearing for a sufficient time to allow the prisoner/child to consult a legal adviser. The period of adjournment will be dependent on the individual facts of the case, the prison regime, the prisoner's /child's ability to access facilities to do so, such as a telephone, any protected characteristics which might mean they require additional time or support, such as a learning disability and any other exceptional circumstances that may be relevant.

4.21 If, when the hearing resumes, the prisoner or child requests a further adjournment to seek legal advice, the governor should consider whether this is justified and may either grant an adjournment or refuse it. If an adjournment is refused the reasons must be recorded on the record of hearing and how and why this decision was made and explained to the prisoner/child. If agreed, the governor must adjourn the hearing for a sufficient time to allow the prisoner/child to consult a legal adviser, as per the guidance above.

4.22 If, when the hearing resumes again, the prisoner or child requests another adjournment to consult their solicitor, the governor should consider this on its merits, taking account of the grounds stated in paragraph 4.20 above and the reasons for refusals, if relevant must be recorded on the record of hearing with an explanation to the prisoner.

Requests for legal representation or a McKenzie Friend at governor hearings

4.23 Prisoners or children facing adjudications before a governor are not automatically entitled to legal representation. However, prisoners and children can request legal representation (physically or virtually) for a governor hearing to represent them for their case. The attendance of the solicitor would be facilitated following conversations between the legal firm and the prison. A McKenzie friend is a person who attends the hearing to advise and support but may not normally actively 'represent' the accused prisoner or child by addressing the governor or questioning witnesses. If the accused prisoner or child requests for legal representation or a McKenzie friend to be present at the hearing the governor must consider this request under the 'Tarrant Principles' (see 6.46-6.51). If the request is refused the consideration and reasons for refusal must be recorded on the record of hearing, and how and why this decision was made explained to the prisoner. (An IA referral must not be made solely on the fact that a prisoner or child has requested legal representation.) The policy guidance on IA referrals must be followed - see paragraphs 6.69-6.85).

Disclosure of evidence

4.24 CCTV, BWVC footage or pin phone recordings forming part of the evidence in an adjudication must not be copied or sent to anyone. Arrangements must be made for the accused prisoners/children and legal advisors or representative to view the evidence at the prison. Failure to allow such evidence to be viewed is likely to lead to any guilty finding being

quashed. However, if the risk of disclosing the information to the prisoner/child and their lawyer is not acceptable or appropriate for security or operational reasons then it cannot be used as evidence to support an adjudication. For further information see paragraphs 6.43-6.45. Consideration must also be given to a request for disclosure of information contained in any intelligence report which has been used to reach a decision in the interest of transparency and procedural fairness. The test of relevance/bearing must be satisfied and, if it is, the material must be provided to the prisoner/child and/or legal representative on the appropriate dissemination form.

4.25 Where a case is not being investigated by the Police, if the prisoner or child requests copies of documentation relevant to the adjudication for themselves or in order to forward them to a legal representative/adviser, a copy of all adjudication paperwork, including witness statements, must be provided free of charge without delay (except where, for example, any disclosure would put someone at serious risk of harm, compromises national or prison security or where a medical report or intelligence could identify someone other than the patient who has provided information). See all considerations at paragraphs 6.43-6.45 for further guidance on disclosure of adjudication papers.

4.26 In cases where urgent action is required, the paperwork can be scanned and emailed direct to the prisoner's or child's legal representative/legal adviser. Where a case has been referred to the Police, information must not be disclosed to the prisoner/child or their legal representative/legal adviser until there is either a decision to prosecute or it has been sent back to the prison for adjudication.

Segregation prior to an adjudication

4.27 In those cases where there is a significant/real risk of collusion or intimidation in between the period of actually laying a charge and the governor's initial consideration of whether to refer the case to an IA, the accused prisoner/child may be segregated under Prison Rule 53 (4)/YOI Rule 58 (4). If held for up to four hours the normal policy procedures which relate to segregation will not apply but if this period is exceeded, then this is segregation and staff must refer to and apply the guidance in PSO 1700 Segregation.

4.28 If the hearing is opened and subsequently adjourned and it is decided that the accused prisoner/child should remain in the segregation unit until the hearing is resumed, Prison Rule 45/YOI Rule 49 will then apply. However, if the adjournment exceeds 72 hours (3 days) then staff should act in line with Reviewing and Authorising Continuing Segregation & Temporary Confinement in Special Accommodation, which part amended PSO 1700, which requires that the Segregation Review Board must review the decision to segregate.

Initial Segregation Health Screening (ISHS)

4.29 There will be no need for an Initial Segregation Health Screen (ISHS) for a prisoner/child placed in the segregation unit simply to await a hearing on the day of the adjudication unless held there for more than four hours. Requirements for an ISHS in relation to the punishment of CC is provided below (paragraph 4.73).

4.30 For guidance on segregating prisoners who are on an Assessment, Care in Custody and Teamwork (ACCT) plan, please see the PSI 64/2011 Safer Custody and PSO 1700 Segregation.

Fitness for hearing

4.31 The accused must be physically and mentally fit to face the hearing and reasonable adjustments need to be put in place for prisoners or children with a disability. Any medical concerns, action taken, advice given, and the adjudicator's decision and reasons must be noted on the record of hearing and explained to the prisoner/child. If there are no medical concerns a note must be made to this effect. See paragraphs 6.13–6.28 for further guidance.

Adjudication hearings and adjudicator duties

4.32 Adjudicators must inquire into reports of alleged disciplinary offences by prisoners /children under the Prison or YOI Rules, investigating the charge impartially and be prepared to inquire in an unbiased manner into the facts of the case by questioning the accused prisoner/child, the reporting officer, and any witnesses, and acting fairly and justly.

4.33 The adjudicator must reach a fair decision based on all relevant evidence presented at the hearing and decide whether or not the charge has been proved beyond reasonable doubt. This means that the adjudicator must be 'de novo' – that is not to have had any direct role in the incident that led to the current charge, and must, as far as possible, disregard any prior knowledge of the prisoner/child or the prisoner's/child's previous disciplinary record. There must be no prior knowledge of the evidence against the prisoner/child, nor knowledge of any information that might be perceived as leading to bias for or against any of the parties to the hearing. If the adjudicator is unable to conduct the hearing 'de novo' then it must be adjourned and arrangements made for a different adjudicator to continue it.

4.34 Adequate reasons for all significant decisions must be noted clearly and legibly, especially in relation to the calling of witnesses (including providing reasons for not calling or for refusing a witness), granting or refusing legal representation (governor cases), reasons for granting or refusing adjournments, finding guilt beyond reasonable doubt, and appropriate punishments and sanctions. If the charge is dismissed or 'not proceeded with', this must be recorded and the prisoner/child informed of the outcome and the reasons for the decision. Where a prisoner/child is found not guilty, this must be recorded as being dismissed. Otherwise, the charge will be recorded as 'not proceeded with' (see paragraphs 4.48-4.50 below). The adjudication paperwork must be retained in line with records retention requirements (PSI 04/2018 Records, Information Management and Retention Policy).

Understanding the adjudication process

4.35 The adjudicator must confirm during the hearing that the accused prisoner/child understands the adjudication process and provide any necessary further guidance. Arrangements must be made to provide appropriate assistance to any prisoner/child who may have difficulty understanding the proceedings or presenting their case due to disability or insufficient knowledge of English, including for IA hearings.

4.36 A copy of this instruction must be available in the hearing room for consultation by all parties if required.

4.37 Children or vulnerable prisoners, who may lack experience of adjudications, should be encouraged to request help from an advocate. Every child must have access to the Independent Monitoring Board (IMB) and Advocacy Services (such as Barnardo's) if not otherwise represented (see paragraphs 6.5-6.8 for further guidance).

Independent Adjudications

Referrals to the Independent Adjudicator

4.38 Following the High Court judgment in *Smith* [2009] EWHC 109, the Prison and YOI Rules were amended in 2011 to allow for a charge against a prisoner/child who is not eligible for additional days to be referred to an IA, where the governor determines that it is "necessary or expedient" for an IA to inquire into it. The prisoner/child will then be entitled to legal representation but will still not be eligible for additional days. This is intended to apply only in exceptional cases where the charge against the prisoner/child is very serious (such as a serious assault), but for some reason it is not being prosecuted in the courts. Adjudicating governors should continue to deal with the great majority of cases. These amended rules also clarify that cases where determinate and indeterminate sentence prisoners are jointly charged (for example, with fighting) may both be referred to an IA for the cases to be heard together.

4.39 If the governor considers that the alleged offence is so serious that a punishment of additional days would be appropriate if the prisoner/child is found guilty, and the prisoner/child is eligible for that punishment, or that it is necessary or expedient for some other reason to be inquired into by an IA, the governor must refer the charge to an IA (District Judge or Deputy District Judge) for the IA to inquire into it. The governor hearing must be adjourned, and arrangements made for an IA to hear the case and re-open the hearing within 28 days of the date of referral (in line with Prison Rule 53A). Adjudicating governors can make a referral at any point up to and including a finding of guilt and before a punishment is imposed.

4.40 Adjudicating governors need to provide full reasons for referring the charge to the IA, on the record of hearing (DIS3) (see paragraph 6.85 below for more information). Otherwise, the charge will be sent back by the IA to the governor for them to inquire into if the seriousness test is not met.

4.41 Care should be taken not to compromise the independence of the IA. The accused prisoner/child must be informed of the status of the charge throughout the process, including all referrals to the IA from the governor, and all referrals back to the governor from the IA. The accused prisoner/child, reporting officer, and any witnesses must be informed of the time and place of the IA hearing, and the requirement for them to attend. The hearing can proceed in the prisoner's absence, in the specific circumstances outlined in paragraphs 6.32-6.35. If a prisoner/child is transferred before the IA hearing, the Chief Magistrate's Office (CMO) must be informed on form IA2 if the hearing is to go ahead at the receiving prison/YOI after a transfer (see paragraph 6.79).

4.42 If the disciplinary offence involves conduct which also constitutes a criminal offence under the general criminal law, and the governor considers that internal disciplinary procedures are insufficient to deal with it, the governor must refer the charge to the Police.

Authority for Independent Adjudicators to consider sufficiency of seriousness of IA referrals and to refer cases back to governors

4.43 IAs have the power to consider the seriousness of a disciplinary charge referred to them and refer it back to the governor to deal with if the case does not meet the seriousness threshold for referral. In light of this, it is crucial that governors provide their reasoning for their referral to the IA. Where the IA considers that the charge is not so serious that additional days could be awarded for the offence if the prisoner/child is found guilty, or does not consider it to be necessary or expedient for some other reason for the charge to be inquired into by the IA, the IA will refer the charge and any associated charge back to the governor for them to inquire

into, and inform the prisoner/child who has been charged that the charge has been referred back to the governor for inquiry. A charge inquired into by the governor following this may not be referred back to the IA.

4.44 IAs have the power to refer a charge back to the governor for review for a police referral. This can happen anytime from initial referral up to and before the punishment is imposed. Where the IA considers that alternative action (police referral) should be taken by the governor, the IA will refer the charge and any associated charge back to the governor for review and inform the prisoner/child who has been charged that it has been referred back to the governor for review. Where the IA has referred a charge back to the governor for review, the governor must review the charge and may take such action as the governor considers appropriate, or re-refer the charge back to the IA, in instances such as where a police referral is not being pursued. Where the governor refers a charge back to the IA, the governor must inform the prisoner/child that the matter has been referred back to the IA. The IA may not refer the charge back to the governor, and the IA must either inquire into the charge, or if the prisoner /child has already been found guilty, impose a punishment.

4.45 If neither paragraph 4.43 nor 4.44 applies, the IA must inquire into the charge.

4.46 If the case is referred to an IA for the first time, the hearing must be arranged within 28 days of referral. See paragraph 6.71 for further information.

Adjournment times

4.47 If it is not possible to complete a hearing for any reason it should be adjourned until a later date. It is for adjudicators to decide how long the period of adjournment should be, and whether further adjournments should be allowed if the case can still not proceed to a conclusion when the hearing resumes. There is no fixed limit on how long adjournments may go on. Adjournment times will be dependent on the individual facts of the case, the prison regime, the ability for the prisoner/child to access facilities such as a telephone, any protected characteristics which might mean they require additional time or support, such as a learning disability, and any other exceptional circumstances. Adjudicators must decide whether, under all the circumstances, proceeding after a delay would be contrary to the principles of natural justice set out below. Overall, the test is whether the delay has undermined the prisoner's/child's opportunity to properly present their own case.

Natural Justice Principles – cases 'not proceeded with'

4.48 If the hearing has reached a stage where it is not possible to reach a conclusion, or where further delay would be unfair on the grounds of natural justice, the adjudicator may decide that it should not proceed further (case 'not proceeded with'). Reasons for such a decision, which must be recorded, might include:

- The release of the accused prisoner/child, or a vital prisoner witness (e.g., the victim of an alleged assault, or a prisoner/child jointly charged with fighting with the accused prisoner/child)
- The non-attendance of another material witness (e.g., a member of the public), either because they refuse to attend, or because attendance has been disallowed for security reasons (which includes an assessment of how significant/important a particular witness might be in the context of a particular case).
- The accused prisoner/child is mentally or physically unfit to attend and is unlikely to be fit within a time when it would be fair to proceed.

- The notice of report is significantly flawed, and there is no time to issue a revised version within 48 hours of the discovery of the offence.
- The notice of report was not issued within 48 hours of the discovery of the offence, or the hearing was opened later than the next day, or, if a Sunday or a bank holiday the next working day, after the charge was laid, (or in IA cases, the hearing was not opened within 28 days of referral), and there were no exceptional circumstances.
- The hearing has been adjourned and the adjudicator is not satisfied that it would nevertheless be fair to continue.
- The adjudicator has confirmed that the prisoner/child is being prosecuted for the offence that is the subject of the adjudication.
- Any deterioration in the quality of the evidence as a result of the passage of time, including physical/tangible evidence, and the memory of key witnesses being weakened.
- Whether the evidence is no longer held/available at all due to the passage of time.
- Any other reason why delay may have caused unfairness, in the sense of having undermined the prisoner's/child's ability to present their own case properly (e.g., in the intervening period, the prisoner/child has suffered a serious deterioration in their health)

4.49 The application of the principles of natural justice apply to all hearings of disciplinary charges, including independent adjudications. In addition, the effect of Ezeh and Connors v UK (2003) is that, where additional days are in contemplation, Article 6 (right to a fair trial) applies. Article 6 additionally requires that a prisoner/child is entitled to a hearing within "a reasonable time" and what is reasonable will depend on all the circumstances of the case in question.

4.50 If the adjudicator decides it would be unfair to continue hearing the charge it should be recorded as 'not proceeded with' (see paragraph 4.48 for further information on charges 'not proceeded with'). If the adjudicator decides it would not be unfair to continue, the reasons for this decision should be recorded and the case should resume. Further consideration should be given to the natural justice issue whenever any further adjournments are requested.

Punishments

4.51 If the charge against the accused prisoner/child is found to be proved beyond reasonable doubt the adjudicator will then decide the appropriate punishment(s) taking account of any mitigation from the prisoner/child or legal representative (if any) and note this on the record of hearing. All establishments are required to publish local punishment guidelines, based on their particular circumstances (e.g., population characteristics, local disciplinary issues, regime activities) that set out standard punishments, or ranges of punishments, for each offence, including a list of available payback punishments and rehabilitative activities. See paragraphs 6.128, 6.143 and 6.177 for further guidance.

4.52 Adjudicators must consider the risk factors on an open ACCT plan or an ACCT closed within the last three months before the charge was laid. Any punishment must accord with the punishments listed in the Prison or YOI Rules and be proportionate to the offence. The punishment and reasons for any departure from the local guidelines must be recorded on the record of hearing and explained fully to the prisoner/child, along with the means by which a review of the guilty finding or punishment may be requested (paragraphs 6.204-6.218 and

6.226-6.230). See paragraph 6.17 if the outcome of a hearing, such as severe punishment is thought to raise safety concerns.

4.53 Prisoners and children must be advised of the outcome of the adjudication and any punishments imposed and the means of requesting a review must be explained to them. For payback punishment or rehabilitative activity conditions the relevant compact must be completed and signed, and a copy kept with the adjudication record (see paragraphs 4.65, 4.70, 6.135, 6.150, 6.153, 6.157, 6.183, 6.187). A copy of the DIS7 should also be sent to the Offender Management Unit (OMU) for filing and any necessary action taken depending on the punishment.

Payback punishment

Purpose

4.54 Payback punishment enables prisoners/children to make amends to their prison community for their misbehaviour by engaging in unpaid time-limited projects in the prison, that sit outside of business-as-usual activities and allocations. These projects should be rehabilitative or reparative in nature.

4.55 Payback punishment provides an opportunity to give prisoners/children a purpose and support behaviour change for prisoners/children in a cycle of disrupting the regime or causing damage. The payback punishment must achieve one or more of the following aims:

- Teach prisoners/children to take personal responsibility for their actions and work towards being rehabilitated through helping others.
- Make amends for their behaviour by undertaking projects that benefit the prison community.
- Encourage the prisoner's/child's personal development to support them to behave positively in prison and encourage their sense of community and pride in their space.

Prisoner's eligibility

4.56 Under Prison Rule 55(1)(i)/YOI Rule 60(1)(i), payback punishment must not be given to an unconvicted prisoner, as they cannot be required to work. This also applies to immigration detainees.

4.57 Under the Children and Young Persons Act 1963, children of 14 years of age and over are permitted to work, and therefore, children or prisoners of this age and above are eligible for payback punishment. For children of compulsory school age, the governor must ensure that the payback punishment does not interfere with the child's legal requirement to participate in education or training courses for a minimum of 15 hours per week, within the normal working week. For children, the payback punishment may not be for more than two hours per day and may not exceed a maximum of 12 hours.

4.58 PSO 4460 Prisoners' Pay provides that prisoners of retirement age are not normally required to work, but they may work if they choose. They may also be required to participate in other purposeful activity and programmes as part of their sentence/training or learning plan, and as such may be given payback punishment.

4.59 Adjudicating governors must thoroughly consider how a prisoner's/child's disability may impact on their ability to engage with payback punishment and provide for any reasonable adjustments to enable their involvement, where practicable.

4.60 Payback punishment may be offered to prisoners who are pregnant or on the perinatal pathway, subject to consideration of the principles outlined in the Pregnancy, Mother and Baby Units, and Maternal Separation from Children up to the Age of Two in Women's Prisons Policy Framework. See paragraph 6.173 for guidance.

4.61 Under Prison Rule 55A(1)(a) and YOI Rule 60A(1)(a), payback punishment may only be given by governors. IAs cannot give prisoners/children payback punishment as a detailed knowledge of the available activities and resources at each establishment is required.

Suitability of payback punishment

4.62 The payback punishment must not be demeaning, degrading, or humiliating for the prisoner/child.

4.63 The chosen projects must not involve repairs or modifications of the structure of the building or the infrastructure that feeds building (such as plumbing and electricals) which are covered by the prison's facilities management contract. Prisons should consult their Facilities Management supplier and the Area Property Operations Manager when developing or reviewing their catalogue of potential payback punishments to offer.

4.64 The payback punishment must be relevant to the charge and the duration of the payback punishment must be proportionate to the severity of the offence committed, according to the tariff.

4.65 The prisoner/child should willingly agree to engage with a payback punishment; it should not be forced upon them. A prisoner/child freely agreeing to the project is more likely to result in behaviour change by giving ownership and motivating the prisoner/child. During the hearing, the prisoner/child must agree to the type of project(s) offered by the governor for the payback punishment, the duration of the punishment, and the time within which the project(s) must be completed. The prisoner/child must sign a payback punishment compact detailing this, to show they understand what they have agreed to. If necessary, the full details of the projects may be provided later, but as soon as practicable following the hearing, along with an updated compact (see paragraph 6.187 for further guidance on payback punishment compacts).

4.66 Payback punishment should be arranged for a time which does not conflict with the prisoner's/child's work, education, or existing rehabilitative commitments. Where this is not possible, the governor must weigh up the benefits of attending the payback punishment against other activities the prisoner/child may be attending. Any absences from work or education to enable their attendance at payback punishment must be authorised. Prisoners/children may receive a concurrent punishment of loss of earnings, however they must not suffer any indirect financial consequences as a result of their absence at work to attend a payback punishment, such as loss of wages nor should they lose their placement, because that would be considered a double punishment.

Suspended punishments with rehabilitative activity conditions

4.67 Punishments take effect immediately unless they are suspended. There are two types of condition that can be attached to a suspended punishment (further guidance can be found at paragraphs 6.139-6.140). Firstly, that the prisoner/child is not found guilty of a further offence and secondly, that the prisoner/child undertakes a rehabilitative activity as specified by the governor, which will support them to address any behavioural or support need(s) underlying the offence(s) they have committed. This section relates to the latter.

4.68 Rehabilitative activities could include, for example, a referral to substance misuse services, peer support, mediation, and other appropriate tier 2 purposeful activities. This condition can be applied to any suspended punishment, other than a caution, added days, or payback punishment.

4.69 Prisoners/children should willingly agree to engage with a rehabilitative activity, as they need to understand its purpose, and be motivated to address the behavioural or support need(s) behind their offence(s) for it to have its intended effect.

4.70 At a minimum, the type of rehabilitative activity and the time within which it must be completed (i.e., the length of the suspension period, which may not exceed six months) must be specified by the governor in the hearing, and included in a rehabilitative activity compact for the prisoner/child to sign, to confirm they understand what they have agreed to (see paragraph 6.153 for guidance on rehabilitative activity compacts). If necessary, the full details of the activity, including the level of engagement required, may be provided later, but as soon as practicable following the hearing, along with an updated compact.

4.71 Prisoners/children should not be removed from work or education to attend their rehabilitative activity; it should be arranged for a time which does not conflict with their work or education. Where this is not possible, the governor must weigh up the benefits of attending either work/education or the rehabilitative activity. Any absences from work or education to enable their attendance at a rehabilitative activity must be authorised. Prisoners/children may receive a concurrent punishment of loss of earnings, however they must not suffer any indirect financial consequences as a result of their absence at work to attend a rehabilitative activity, such as loss of wages nor should they lose their placement, because that could be considered a double punishment.

4.72 Under Prison Rule 60(4) and YOI Rule 63(4), rehabilitative activity conditions may only be given by governors. IAs cannot give prisoners/children rehabilitative activity conditions as a detailed knowledge of the available activities and resources in each establishment is required.

Cellular confinement

4.73 In line with Prison Rule 58/YOI Rule 61 (1), whenever the adjudicator is considering imposing a punishment of CC, including a suspended punishment, arrangements are to be made for a doctor or registered nurse to complete an ISHS so that the adjudicator can take account of any medical advice that CC would not be an appropriate punishment for the prisoner on this occasion. This can be done in advance of the start of the hearing if there is time to do so. A further ISHS must be completed if it is decided to activate a suspended punishment of CC (since the change of circumstances may affect a vulnerable prisoner differently to the initial suspended punishment). Further guidance on the segregation process, the ISHS, and on the monitoring of prisoners in CC is in PSO 1700 Segregation). CC must not be given to children as an adjudication punishment.

Additional days

4.74 For independent adjudications, if the charge against the prisoner/child is proved the IA will consider the appropriate punishment(s), taking into account the seriousness of the offence, any punishment guidelines issued by the Senior District Judge which are available on gov.uk (see Annex A) in relation to that type of offence the prisoner's/child's previous disciplinary record, the likely effect of the punishment on the prisoner/child, and any mitigation the prisoner/child may offer.

Additional days – sentence calculation

4.75 If the prisoner/child receives a punishment of additional days, staff responsible for sentence calculation must be informed and any necessary adjustment to the prisoner's release date must be made within five days of the hearing and the prisoner/child notified in writing. Staff responsible for offender management must be informed of this adjustment and take account of it when making arrangements for the prisoner's/child's release or when the prisoner/child is transferred to another establishment. For added days that were imposed before DPS was rolled out to the prison, adjustments cannot be made to a prisoner's/child's release date without supporting evidence that additional days have been awarded. The adjudication paperwork must be provided as evidence, in addition to an entry on the prisoner's/child's digital record. Other acceptable evidence includes an entry on a prisoner's/child's record or on the calculation sheet where the entry has been initialled and counter initialled along with the existence of a release date notification slip. For added days imposed after DPS was rolled out, a copy of the DIS7 on DPS will be sufficient evidence which will include an electronic signature of the officer who has completed the form on behalf of the IA, and the date of the hearing (see paragraph 6.83). If the prisoner/child is transferred, the receiving prison must ensure that any added days on a DIS7 are taken into account so that the prisoner/child is released on the correct date.

4.76 Additional days must be applied to the actual Conditional Release Date (CRD)/Automatic Release Date (ARD)/Non-Parole Date (NPD)/at the end of a fixed term recall (FTR) before consideration is made for the Discretionary Friday/pre-Bank Holiday Releases Scheme.

Damages compensation payments

4.77 Where a prisoner/child causes damage to a prison or YOI or to any property belonging to a prison or YOI and has subsequently been found guilty, PR 55AB and YOI R 60AB allow governors and IAs to impose a requirement that a prisoner/child pay towards the cost of making good the destruction or damage caused. Recovery must not continue if the prisoner/child is returned to custody solely on a different charge and sentence.

4.78 The requirement must only be imposed following a finding of guilt for a charge under PR 51 (17) or 51 (17A) or YOI R 55 (18) or 55 (19) which involves the destruction of or damage to any part of a prison or prison property, including for example damage or destruction aggravated by a person's protected characteristic, and may include the cost of labour to put it right. The requirement can be imposed instead of or in addition to any punishment.

4.79 Governors can take monies directly from prisoners'/children's Private Cash, Savings and Spend accounts to satisfy the compensation requirement. It is advisable to inform prisoners/children at the start of the hearing, that, if found guilty, they will be required to pay compensation for the damage caused unless there are sufficiently compelling reasons not to and that monies may be recovered from the prisoner's/child's accounts to satisfy the compensation requirement (as mentioned in the DIS2 form). It is advised that the reason for this compensation rule is explained to them, so that the prisoner/child understands the consequences and can prepare their defence.

4.80 Prisoners/children must be left with a minimum amount in their accounts to purchase necessary items and remain in contact with their family/friends. It will be for Governors, outside of the adjudication process, to set a minimum amount to be left in the prisoner's/child's accounts, taking into consideration the prisoner's/child's individual circumstances, but this must not be less than £5.00 per week. Anything over the minimum determined by the Governor must be recovered from the prisoner's/child's accounts until the

full amount of the compensation requirement has been paid (see paragraphs 6.123-6.125 below).

4.81 The total amount to be recovered must not exceed the cost of making good the damage or replacing any property destroyed and must not exceed £2000. The amount can be reduced to zero if there are sufficiently compelling reasons to do so. The debt lasts for a maximum of two years from the date it was imposed or until the prisoner's/child's sentence expiry date, whichever occurs first and regardless of whether or not the full amount has been paid.

4.82 DPS must be kept updated regarding the amount paid, the supporting adjudication number, and other relevant information. For further rules and guidance on damages compensation payments and the process for recovering monies, see paragraphs 6.108-6.127.

5. Constraints

5.1 IAs hear cases to exercise their powers independent of the Prison Service. They are bound by the Prison and YOI Rules but are not legally bound to comply with this Policy Framework – although we hope they will be guided by it. Care should be taken not to compromise their independence.

5.2 The threat of punishment must not form part of the local safety strategy for dealing with incidents of self-harm. Such incidents are better managed through safety procedures than the disciplinary process. Staff should be alert to prisoner /child safety and welfare issues throughout the adjudication process, from charging through to hearing and punishment.

6. Guidance

Before an adjudication

Laying charges

6.1 A full list of Specimen charges, definition of offences and punishments can be found in Section 7. A disciplinary charge will normally be laid by the member of the establishment staff who witnessed or discovered the alleged offence (the 'Reporting Officer'), but if that person is unavailable another member of staff may lay it on their behalf. In these circumstances the report of the alleged incident will be recorded as "hearsay evidence" – see paragraph 6.97 for an explanation. See paragraph 4.13 for guidance on timing of charging. In this context a 'member of the establishment staff' includes any governor, prison officer or Operational Support Grade (OSG), and any other directly employed officer of the prison, anyone seconded from within HMPPS, or anyone on a long-term contract to provide services at the prison (e.g., probation staff, teachers, healthcare professionals etc.). In contracted out establishments it includes the Director, Controller, and Prisoner Custody Officers. If an alleged offence is discovered by someone on a short-term contract or temporarily employed (e.g., an agency nurse), who is unfamiliar with the Prison or YOI Rules and adjudication procedures, good practice would be for that person to inform an officer, who should then issue the Notice of Report. The officer's report will be hearsay evidence (paragraph 6.97), and the temporary employee should be called as a witness at the adjudication hearing, to provide direct evidence in support of the charge.

6.2 Staff are reminded of the importance of timely completion of paperwork – the charge must be laid as soon as possible and, save in exceptional circumstances, within 48 hours of the discovery of the offence – and the tests that will be applied to investigating and proving the charges in adjudications (see Section 7). Before laying a charge, staff should check if the prisoner has been assessed as being neurodivergent or having a low literacy level, a learning difficulty or disability that would make reading or understanding the forms difficult or unlikely. The appropriate support should be provided where necessary, but this should not be a reason to lay a charge outside of the 48-hour time frame. Electronic signatures are permitted provided that there is a defined audit trail which would guard against allegations of tampering.

Immigration Detainees and Foreign National Prisoners

6.3 Immigration detainees and foreign national prisoners held within the prison estate are subject to Prison Rules not Detention Centre Rules. Immigration detainees are treated as unconvicted prisoners with the same rights and responsibilities as unconvicted prisoners (PSO 4600 'Unconvicted, Unsentenced and Civil Prisoners').

6.4 There is no requirement for an unconvicted prisoner to work but they may choose to under Rule 31 – see paragraph 6.114 regarding the recovery of monies for damage to prisons and prison property from this type of prisoner.

Children

6.5 The Children Act 2004 places a duty on key people and bodies to make arrangements to ensure that their functions, and any services that they contract out to others, are discharged with regard to the need to safeguard and promote the welfare of children**.** In the prison context, the duty does not give governors any new functions, nor does it over-ride their existing functions**.** However, it requires them to carry out their existing functions in a way that takes into account the need to safeguard and promote the welfare of children.

6.6 All children should be signposted to the IMB and Advocacy Services to ensure they fully understand and are able to engage with the adjudication process. Adjudicators must give due regard to the age, maturity and individual circumstances of each child involved.

6.7 Children must not be given CC as an adjudication punishment. Where a child receives a punishment of removal from a wing, the child should only be removed to a segregation unit in exceptional circumstances. Even in cases where a child is removed from a wing, there is a strong presumption that they will continue to have unfettered access to other parts of the regime, unless there is an assessed risk which makes their participation in other parts of the regime unsafe.

6.8 All adjudications for children must be consistent with the instructions and principles found in Safeguarding and child protection in the Children and Young People Secure Estate Policy Framework.

Offences in court rooms

6.9 Where an offence is alleged to have taken place in a courtroom (including a room within an establishment operating at the time as a court via a video link), while the court was sitting, no charges are to be laid; it will be for the court to deal with the allegation. If an alleged offence occurs elsewhere within the court building, when the prisoner is in the custody of prison staff or escort contractors, the Rules under which a charge may be laid will be those applicable to the establishment the prisoner has been brought from (before appearing in court) or taken to (after the court appearance).

Discovery of offence

6.10 An offence is 'discovered' when an incident or action is witnessed by a member of staff, or other evidence indicating that it has occurred comes to light (see further guidance under individual charges in Section 7).

Multiple charges and charges with more than one accused

6.11 If a prisoner is charged with more than one offence arising from a single incident each charge should be recorded separately with appropriate Prison or YOI Rule references, although this may be done on a single notice of report form. If a prisoner is charged with a number of offences arising from separate incidents, each charge should be laid on a separate notice of report form. The adjudications on related charges may be combined into a single hearing (with separate findings for each charge). Adjudications on unrelated charges against the same prisoner may be heard in sequence by the same adjudicator (unless the evidence heard in one case makes the adjudicator not de novo for another case).

6.12 If more than one prisoner is charged in connection with a single incident, each prisoner should be issued with an individual notice of report, but the adjudications may be heard together so that all the accused prisoners hear the same evidence, with the findings and any punishments reserved until the hearing has been completed in respect of each prisoner. Alternatively, the adjudicator may decide to part hear each case separately, adjourning and switching from one to another in stages, to build up a complete picture of the incident. Again, the findings and any punishments should be reserved until all the hearings are completed. If the prisoners are found guilty the adjudicator must ensure that the evidence supports that finding for each individual prisoner, and that any punishment is appropriate for that particular prisoner.

Self-harm

6.13 HMPPS's response to self-harm must be to look to the care of the individual prisoner as its priority. It would not normally be appropriate to lay disciplinary charges where the prisoner's actions were related to self-harm or preparations for it. The threat of punishment must not form part of the prison's local safety strategy for dealing with such behaviour. Such incidents are better managed through safety procedures than the disciplinary process.

6.14 A prisoner's challenging or anti-social behaviour may also be a sign of distress or mental ill-health and must not be viewed in isolation as a disciplinary issue. If early signs of distress or tendency to self-harm are overlooked or met with a punitive response, the risk of eventual tragedy may be increased. Because of this, staff should consider whether the behaviour presented is the first manifestation of a potential safety issue, and whether taking the prisoner through the disciplinary process is the correct response.

6.15 Although prisoners should not normally be charged with a disciplinary offence for incidents of self-harm, or preparation for self-harm, a charge under PR 51 (5)/YOI R 55 (6) – intentionally endangers the health or personal safety of others or, by their conduct, is reckless whether such health or personal safety is endangered – may exceptionally be appropriate where the prisoner's actions also intentionally or recklessly endangered others, for example starting a fire. The person managing the incident will need to decide whether it is likely that the prisoner intended to cause injury to others or was reckless about it. If they are satisfied about intention or recklessness, a charge may be brought. Otherwise, the events could be interpreted as an indication of severe distress which would not warrant a punitive response. For further guidance on interpretations of 'intentionally' or 'recklessly, see paragraphs 7.35-7.40 and 7.84-7.85. Where a prisoner makes claims of self-harming, all relevant considerations by the adjudicator should be recorded, to help show that the outcome was procedurally correct and safe.

6.16 The adjudicator should then take account of the accused prisoner's state of mind at the time of the incident and must be aware of the risk factors listed on any open ACCT plan, or any ACCT that was closed in the three months before the charge was laid – when they are considering the evidence and imposing punishments. Where a prisoner's risk of harm to self comes to light only during an adjudication, the adjudication must, be adjourned for advice from healthcare staff, safety team staff and referral to the ACCT process. Further information on safety procedures can be found in PSI 64/2011 Safer Custody.

6.17 If the outcome of the hearing (e.g., a severe punishment) is thought to raise safety concerns, the appropriate staff must be informed to aid management of the impact on a prisoner's risk of self-harm (also see paragraph 7.182). The cell sharing risk assessment may need to be reviewed if any indicators of heightened risk become evident during the adjudication process. The indicators are listed in PSI 20/2015 Cell Sharing Risk Assessment Annex A, paragraph 1.4.

Adult Safeguarding

6.18 In line with the guidance in PSI 16/2015 Adult Safeguarding in Prison, Governors must have systems in place to record and respond to reports of suspected instances of abuse or neglect, including protecting complainants/reporters from victimisation. Definitions of abuse and neglect are provided in PSI 16/2015 Adult Safeguarding in Prison,.

6.19 For abuse and neglect to be prevented, standards of behaviour must be set and maintained for prisoners. Serious cases of abuse or neglect will be referred to the police in accordance

with the Crimes in Prison Referral Agreement (see para 6.52) and where appropriate to the Disclosure and Barring Service.

6.20 Other cases will be considered on a case-by-case basis, but generally the most appropriate charges would be PR 51(1) YOR 55(1) commits any assault, PR 51(20) YOIR 55(22) uses threatening, abusive or insulting words or behaviour or PR 51 (5), YOI R 55 (6) intentionally endangers the health or personal safety of others or, by their conduct, is reckless whether such health or personal safety is endangered. These could deal with the following categories of behaviour:

- physical abuse – including any form of assault; withholding food or drink; force-feeding; wrongly administering medicine; failing to provide physical care and aids to living.
- emotional or psychological abuse – including verbal abuse; threatening abandonment or harm; isolating; taking away privacy or other rights; harassment or intimidation; blaming; controlling or humiliation.
- financial or material abuse – including withholding money or possessions; theft of money or property; fraud; intentionally mismanaging finances; borrowing money and not repaying; discriminatory abuse – including verbal harassment or other maltreatment due to a prisoner's protected characteristics (as defined in the Equality Act 2010 and explained in PSI 32/2011 Ensuring Equality).

Prisoners with specific needs and difficulties

6.21 If prisoners have any disability, are neurodiverse, or have a communication or language difficulty that may impact their ability to understand and participate in the hearing, adjudicators must consider what help may be provided for them and adjourn as necessary for this to be arranged (see paragraph 4.31) for example, a translator.

6.22 Account should also be taken of ageing medical conditions, such as dementia and mobility. For example, taking account of dementia when deciding whether it is fair and appropriate to lay a disciplinary charge (this is a discretion not a duty) and, ensuring that the elderly prisoner has the assistance they need to participate in the hearing to ensure fairness, and that the hearing only proceeds if the prisoner is fit to take part.

6.23 Prisoners with disabilities such as deafness, visual impairments, neurodivergence or with mental health conditions may require special facilities. Alternative formats may not always be necessary; for example, a prisoner who is hard of hearing may be able to lip read as long as those taking part in the proceedings ensure that they address the prisoner directly and enunciate clearly.

6.24 Alternative formats, which may help those with disabilities or those who are neurodivergent include:

- Audio tape format for those who have visual impairments, dyslexia, or a learning disability.
- British Sign Language (BSL) with a sign language interpreter for those deaf or hard of hearing prisoners who use it. Many prisons have one or more members of staff trained in BSL. A portable induction loop may support those using a hearing aid. Further information can be found in PSI 32/2011 Ensuring Equality.
- Large print or Braille for those prisoners with visual impairment.

6.25 It is important to present information about the proceedings in a format that the individual prisoner can understand and to periodically check that they understand what is happening and what is being said.

6.26 For further advice on making reasonable adjustments for prisoners with a disability please see PSI 32/2011 Ensuring Equality.

Pre-hearing procedures

Accused prisoner's fitness for hearing

6.27 A list of prisoners due for adjudication should be forwarded to the Healthcare Unit in time for any medical concerns to be drawn to the adjudicator's attention before the start of the hearing. Additional factors may also be relevant for female prisoners regarding the alleged offence and to their fitness to engage in any hearing or punishment. Consideration should also be given to any childcare responsibilities, pregnancy and perinatal support needs and/or the impact of women's hormonal fluctuations such as premenstrual tension and the menopause. Healthcare colleagues and Pregnancy and Mother & Baby Liaison Officers should be consulted, where relevant information may be available, as well as consideration being given to any information offered by the woman herself. For further information please refer to the Women's Policy Framework.

6.28 Adjudicators should be satisfied that the accused prisoner is physically and mentally fit in the following circumstances and if there are any doubts about this, Healthcare staff should be asked for advice:

- to face a hearing (fitness to attend hearing)
- to face the subsequent punishment (health and welfare impact of punishment) - see paragraphs 6.131 and 6.132 and paragraph 7.182
- if the prisoner's mental and/or physical health may have been a relevant issue at the time of the alleged offence (e.g., if the prisoner's actions may have been caused by mental illness or the effects of medication, or if the prisoner raises other health issues in defence, for example being too unwell to work or comply with an order, or medical reasons for failing to provide a MDT sample – see paragraphs 7.35-7.40 and 7.84-7.85 on recklessly endangering health and safety). Adjudicators should give due regard to prisoners with experiences of care which may make them more vulnerable to exploitation or mean they demonstrate more extreme behaviour in the prison environment. See paragraphs 6.13-6.17 for guidance on prisoners who may have self-harmed.

Transfers before hearing is commenced or concluded

6.29 It is important that cases continue when a prisoner transfers to another prison – this includes where a prisoner is moved from an open to a closed prison due to a disciplinary offence. The adjudication paperwork should be sent to the receiving prison as soon as possible. If a prisoner is transferred before a charge can be laid the sending prison must ask the receiving prison to lay the charge within 48 hours of discovery, using the notice of report on DPS – see paragraph 6.79 for advice on continuing IA hearings.

During an adjudication

Hearing room layout

6.30 Hearings should be conducted in a private room set aside for the purpose, in an atmosphere that is generally relaxed to encourage prisoner engagement, while still formal enough to emphasise the importance of the proceedings. Adjudicating governors should assess the level of risk the prisoner presents to the adjudicator and other staff and witnesses and assign escort staff accordingly. See paragraphs 6.86-6.91 about ensuring the safety of an IA. Those staff chosen for escort duties will play no part in the proceedings either as reporting officer or witnesses and will not act in any way that could be perceived as intimidating or obstructive towards the accused prisoner or any witness. At least two escort staff should be present at all IA hearings (other than those conducted virtually).

6.31 The hearing room and furniture should be risk assessed to reduce the potential for violence. Good practice is to ensure that furniture is screwed down. The adjudicator should also ensure that the room is accessible for prisoners and others with mobility issues, and the necessary adjustments are made to room layout, when required. The room should normally include seating and tables for the adjudicator, the accused prisoner and any legal representative or McKenzie friend, the escort, and for the reporting officer or other witness. The accused prisoner should be provided with writing materials to take notes. A copy of this Policy Framework should be available for reference. The accused prisoner's core record and previous disciplinary record should not be present in the room.

Hearings in a prisoner's absence

6.32 If a prisoner refuses to attend a hearing, or the adjudicator refuses to allow attendance, for example, on the grounds of disruptive behaviour or an ongoing dirty protest, the prisoner should be warned that the hearing will proceed in their absence. The prisoner should be given a Refusal to attend form (see Annex A) and be given the opportunity to state their reasons for refusing to attend. If the prisoner refuses to sign the document, the officer should note this on the form, also noting any reasons raised verbally by the prisoner. This should be dated and signed by the officer and a copy saved to present to the adjudicator.

6.33 Payback punishment and rehabilitative activity conditions must not be given in the prisoner's absence. Prisoners should willingly agree to undertake and engage with payback punishment and rehabilitative activity conditions, otherwise an alternative punishment should be imposed. They should not be forced to comply as willingness to engage is essential to achieve the full intended benefit.

6.34 If during the course of the hearing the adjudicator is satisfied that the prisoner has ceased to be disruptive, has expressed a wish to attend or is in a suitable condition to attend then attendance will be allowed. If the prisoner is not present, they will be informed of the outcome at the end of the hearing and should be issued with a completed DIS7 form. The adjudicator must record the reasons why they concluded that proceeding with the hearing in the absence of the prisoner was just and fair under all the circumstances.

6.35 If a prisoner is unable to attend a hearing through illness or court appearances the adjudicator may open the hearing and adjourn it until the prisoner is available. Healthcare may be asked to advise when the prisoner is likely to be fit enough to attend, and the adjudicator should take this into account when deciding whether it would be fair to continue (natural justice). Any actions and reasons must be noted on the record of hearing.

Victims

6.36 Victims need to feel supported through the adjudication process. Where the victim is a member of prison staff, governors should consider the appropriateness of them being in the room during the hearing where this may cause distress due to the nature of the offence. Adjudicators may consider alternative ways for the victim to give evidence, such as through a victim statement, although this would need to be balanced with the right of the prisoner to question the reporting officer's evidence. Adjudicators may also consider utilising laptops to enable victims to give their evidence virtually rather than in person.

6.37 The governor should inform the victim at the earliest opportunity of the outcome (including the outcome of IA and police referrals). Where a police referral is not proceeded with, the victim has a right to appeal the charging decision through the Victims' Right to Review Scheme.

Hearing procedures – preliminaries

6.38 The accused prisoner and escort should enter the hearing room ahead of the reporting officer and witnesses and leave the room after the reporting officer and witnesses, to avoid any suggestion that evidence may have been given to the adjudicator when the prisoner was not present. Only one witness should be in the room at a time, except when the reporting officer wishes to question a witness (when they will necessarily both be in the room at the same time). The reporting officer's role as a witness giving evidence is clearly separate from any role in questioning another witness. The adjudicator will ensure that the reporting officer and other witnesses do not give evidence simultaneously.

6.39 The adjudicator should make a complete record of the hearing on form DIS3. This need not be a word for word account but must record all salient points and reasons for decisions. Clarity and legibility are important, since the DIS3 will be relied on in any subsequent review (including judicial review), and a case may stand or fall based on the information recorded. To encourage the prisoner's understanding and participation in the process, it would be good practice for governors to use rehabilitative skills shown to be effective at improving perceptions of fairness and intent to comply with the rules. These include active listening, being collaborative and transparent, showing empathy and concern, and demonstrating warmth through body language.

6.40 The adjudicator will confirm that the charge has been laid properly in accordance with the Prison or YOI Rules, and that time limits in relation to laying the charge and opening the hearing have been met. If an error is discovered in the adjudication paperwork, the adjudicator will decide whether it would result in any unfairness or injustice to the accused prisoner to continue with the hearing. The prisoner should be informed of any errors and offered an opportunity to make representations as to why it might be unfair or unjust to continue with the hearing. Minor errors are likely to be insignificant, but more serious errors may lead to the charge not being proceeded with – see paragraph 4.48. Where hearings are proceeding in a prisoner's absence, confirm that the prisoner has been informed and note reasons for absence.

6.41 Upon opening the hearing, the adjudicator will:

- Confirm the accused prisoner's identity and establish fitness.
- Check that time limits in relation to laying the charge and opening the hearing have been met in accordance with the Prison or YOI Rules.

- Read out the charge and confirm that the charge as recorded on the DIS1 is identical to that on the DIS3.
- Consider whether the offence falls within the crimes listed on the Mandatory Crime Referral Criteria in Annex A of the Crime in Prison Referral Agreement (see paragraphs 6.52–6.57), or whether the charge is serious enough or there are aggravating factors for a referral to the police. If a case is referred to the police at this stage, a plea must not be taken.
- If not referred to the Police or if the police confirm that no prosecution is to take place, consider whether the charge is so serious that additional days should be awarded if the prisoner is found guilty or that it is necessary or expedient for some other reason for referral to the IA (see paragraphs 4.38-4.42).
- If a case has been referred back to the governor by the IA for review, the governor must note the reasoning provided by the IA for a police referral and make a decision on suitability for referral based on the evidence and facts of the case. If it is not suitable for a police referral, the governor may refer back to the IA.

6.42 Otherwise proceed with the hearing:

- Confirm that the prisoner understands the meaning of the charge. If not, explain it.
- Check if the prisoner requires any help or assistance such as an interpreter, disability aid. In IA cases prisoners are entitled to legal representation if they wish, and an adjournment should be granted to allow time to arrange this. If the IA refers the case back to the governor for inquiry, the prisoner loses their automatic right to legal representation.
- In cases heard by governors, any request for legal representation or a McKenzie friend at the hearing (see paragraph 6.46) should be considered under the 'Tarrant Principles'– see paragraphs 6.46-6.47. If the governor agrees to allow legal representation a suitable adjournment should be granted to arrange this. If they wish to consult a solicitor for legal advice before proceeding further, the hearing should be adjourned giving prisoners sufficient time in which to obtain legal advice, following guidance on adjournment times.
- Confirm that the prisoner generally understands the adjudication procedure and that they have been given Form DIS2. If not, offer further explanation.
- Confirm that the prisoner received the notice of report at least two hours before the opening of the hearing (unless the hearing is being resumed after a previous adjournment and the prisoner confirms that less than two hours has been enough time to prepare for the hearing). If not, consider how much more time will be needed, adjourning as necessary.
- Ask whether the prisoner has prepared a written statement, and if so, ensure that it is attached to the record of hearing. The statement will be read out when the prisoner comes to give evidence, or at the mitigation stage.
- If the prisoner does not want legal advice or representation at the hearing, or when this has been obtained (or representation refused) and the adjourned hearing is resumed, the adjudicator should ask whether the prisoner pleads guilty or not guilty to the charge. If the prisoner equivocates or refuses to plea, a not guilty plea should be recorded.

- Confirm that any written witness statements already provided for the hearing have been copied to the prisoner and any legal representative (if there is one, at this stage)
- Ask whether the prisoner wishes to call any witnesses, and if so, note their names and briefly outline the nature of the evidence they are expected to give, justifying acceptance or refusal of witnesses (see paragraphs 6.94 and 6.100 on whether witnesses will be called).
- For charges in relation to damage caused to the prison or prison property, confirm that the prisoner has been informed that, if found guilty they will be required to pay compensation for the damage caused unless there are sufficiently compelling reason not to and that monies may be recovered from their accounts to satisfy the compensation requirement. Then confirm that an assessment of the cost of the damage is attached. See further guidance on the compensation requirement in paragraphs 6.108–6.127 below.

Disclosure of adjudication papers and evidence

6.43 Information relevant to the disclosure of adjudication papers or the decision to continue segregation may be withheld from the prisoner in certain circumstances, such as:

- in the interests of national security.
- for the prevention of crime or disorder, including information relevant to prison security.
- for the protection of a third party who may be put at risk if the information is disclosed.
- if, on medical or psychiatric grounds, it is felt necessary to withhold information where the mental and or physical health of the prisoner could be impacted.
- where the source of the information is a victim, and disclosure without their consent would breach any duty of confidence owed to that victim or would generally prejudice the future supply of such information. If this information is withheld, a 'gist' (i.e., a summary) of the information should be provided. If this is not possible for any of the reasons listed, the evidence cannot be used as evidence to support an adjudication.

6.44 The reporting officer should prepare a summary of the evidence contained in any CCTV or BWVC footage and identify the persons within it. It is not appropriate for the prisoner to identify themselves in the footage as the evidence may be contested. When viewing evidence of a prisoner's behaviour especially where the prisoner is believed to have taken a substance. Adjudicators may consider it too distressing for the prisoner to view and may offer the prisoner the option of declining to view the footage.

6.45 If the risk of disclosing CCTV or BWVC evidence to the prisoner and their lawyer is not acceptable or appropriate for security or operational reasons then it cannot be used as evidence to support an adjudication. For further information on the use of body worn video cameras please see the Body Worn Video Camera Policy Framework. . Consideration must be given to the matter of the infringement of "personal rights" under the General Data Protection Regulation (GDPR) where images are captured of not only those subject to the adjudication but anyone who is unrelated to the incident and just happen to be present in the vicinity. This would be applicable to staff, prisoners and any third party and any disclosure could require the consent of the individual concerned or the images to be pixelated. The Body Worn Video Camera Policy Framework also provides further information on pixilation and relevant considerations.

Tarrant Principles – legal representation or McKenzie friend requests at governor hearings

6.46 An accused prisoner may request legal representation or a McKenzie friend at a hearing. A McKenzie friend is a person who attends the hearing to advise and support but may not normally actively 'represent' the accused prisoner by addressing the governor or questioning witnesses. The McKenzie friend may be a member of the public, another prisoner or a solicitor acting in a personal capacity as a friend, (i.e., without claiming legal aid). A McKenzie friend may be allowed to attend (if agreed), even if legal representation is refused. When a request has been made, governors will consider each of the following criteria and record their consideration and reasons for either refusing or allowing representation or a friend.

- The seriousness of the charge and the potential penalty – Adjudicating governors should use their own judgment and knowledge of the local punishment guidelines to decide how serious a charge and potential penalty are. A penalty at or near the maximum will not necessarily mean that representation must be granted. Prisoners sometimes claim that any finding of guilt at adjudication is necessarily serious as it will influence a future Parole Board decision on release or progress to a lower category prison, but this is hypothetical. Adjudicating governors should only consider the seriousness of the charge and potential punishment resulting from the current adjudication and should disregard any possible effect on the Parole Board, who will, in any case, base their decision on a range of risk factors, not just on one adjudication.

- Whether any points of law are likely to arise – This means unusual or particularly difficult questions of legal interpretation, such as the exact definition of an offence within the Prison or YOI Rules, or the effects of a recent court judgment, not merely that a solicitor may refer to the relevant Rule. In such cases, which are likely to be rare, a qualified legal representative may be more suitable than a McKenzie friend.

- The capacity of particular prisoners to present their own case – Prisoners who are unable to follow the proceedings or to present a written or oral defence due to language or learning difficulties, and particularly those who may have mental health problems, may need help from a friend or representative. Adjudicating governors will base their decision on the individual circumstances of each case (assuming they have not already decided that the prisoner is unfit to continue with the adjudication because of mental health problems – see paragraph 6.28).

- Procedural difficulties – This relates to any special difficulties prisoners might have in presenting their case, such as in questioning expert or other witnesses. The circumstances in each case will vary, but where questioning witnesses is at issue a qualified legal representative will be preferable to a McKenzie friend, who may only advise, not question.

- The need for reasonable speed – Adjudicating governors should balance the inevitable delay while a legal representative prepares a case, including consulting the accused prisoner and interviewing potential witnesses, with the overriding necessity to ensure natural justice. A McKenzie friend may take less time to prepare, but there is still likely to be some delay.

- The need for fairness – If one prisoner among a group jointly charged in connection with the same incident is granted legal representation or a McKenzie friend, the others in the group may need to be treated the same. If a prisoner is granted help for one charge, the same help should be given for other charges against that prisoner arising from the same incident.

6.47 Any other reason(s) put forward by the prisoner should also be taken into account and decided on its merits. For McKenzie friends, the governor should also decide whether the person proposed is suitable.

6.48 If the prisoner is granted legal representation for a hearing by a governor, the governor should consider whether the Government Legal Department should be asked to provide advice. This is likely to be extremely rare and should only happen when difficult points of law or procedure are expected to arise, that the governor will need legal advice on. Any legal representative appearing for HMPPS will only advise, not present the case against the prisoner.

6.49 Prisoners' legal advisers or representatives should be granted facilities to interview the accused prisoner and, if they are willing, other witnesses. Similar facilities may be granted to McKenzie friends, as far as possible (there may be limits on this if, for example, the friend is another prisoner).

6.50 Any arrangements made under the above two paragraphs should be made by staff unconnected with the adjudication.

6.51 Adjudicating governors are not required to respond to points raised in correspondence from legal advisers or representatives, unless they choose to, and may suggest in their reply that any concerns are raised during the hearing.

Referral to the police

6.52 The Crimes in Prison Referral Agreement[18] sets out the principles relating to the referral, investigation and prosecution of crimes committed in prison. In situations where a serious criminal offence appears to have occurred the police should be contacted immediately it is discovered. This Protocol sets out which crimes must be referred to the police. Other crimes are referred to the police where it is determined that the relevant internal disciplinary processes are insufficient to deal with the offence and where circumstances indicate that referral to the police is appropriate or where the victim requests police referral. Where an incident is referred to the police, disciplinary charges should be laid in the normal way within 48 hours of the incident, and an adjudication opened on the following day, unless it is a Sunday or a bank holiday, and adjourned pending police investigation. A plea must not be taken at the beginning of the first hearing. The prison will prepare a prison community impact statement which will be sent to the police to describe the impact the crime has on the prison environment. Where a police referral is made after the governor opens the first hearing, the case should not be referred to an IA at this stage, since the 28-day time limit for an IA to open a hearing may expire before the police/Crown Prosecution Service (CPS) reach a decision. The prisoner should be kept informed of any progress at suitable intervals.

6.53 Where the case was initially investigated by the IA, where a plea was taken from the prisoner before deciding to refer the charge back to the governor for review for police referral (see paragraphs 6.67-6.68), this does not prevent a police referral from being made because a guilty plea in an adjudication is not the same as pleading guilty under a police caution.

6.54 Referring a crime to the police does not automatically mean that a full police investigation will take place or that the CPS will be consulted and a criminal prosecution will take place.

[18] https://www.gov.uk/government/publications/handling-crimes-in-prison-protocol

6.55 Where a decision is made that a formal criminal investigation will not take place, the Crime in Prison Single Point of Contact (SPOC) will be informed as soon as practicable and in any case within 10 working days of the referral being made. This will enable any prison adjudication procedures to continue.

6.56 As soon as the decision is made by the CPS to prosecute, the adjudication must be recorded as 'not proceeded with'. It would be double jeopardy for the prisoner to be punished – or acquitted – by a court, and then face a further adjudication punishment.

6.57 Where the prisoner will not face prosecution, the adjudication may then resume, provided the delay in reaching a decision on prosecution has not made it unfair to proceed. If a case is not being pursued by the police or CPS, this is not a sufficient reason alone to dismiss an adjudication. If the CPS has concluded that there is no reasonable prospect of conviction because the evidence is not reliable or credible, it may not be reasonable or fair to continue an adjudication - for example because there are solid reasons for concluding that the proposed prosecution witness evidence lacks integrity, accuracy, or consistency. However, the strict rules about the admissibility of evidence in a criminal trial do not apply in the same way in an adjudication hearing and the CPS may have decided not to prosecute for other reasons and therefore, in some cases, it may still be appropriate to go ahead with an adjudication even though the CPS has concluded that there is no realistic prospect of conviction at a criminal trial. Each case should therefore be determined on a case-by-case basis, considering why a criminal investigation is not being pursued. Any reasons why a case was not prosecuted should be noted on the record of hearing and if a case is referred to an IA it must be recorded on the referral form (IA1) under additional comments.

Referral to an Independent Adjudicator

6.58 The most serious disciplinary offences will normally be referred to the police, as in paragraph 6.52, and prosecuted in the courts rather than adjudicated. But if the case is not referred, or no prosecution follows and the adjudication resumes, the governor should then consider whether to refer the case to an IA. If the prisoner is eligible for additional days (see paragraphs 6.160-6.164 and 6.167), and the governor considers that the offence is serious enough to merit this punishment if the prisoner is found guilty, the case should be referred (see paragraph 6.65). If the prisoner is not eligible for additional days the case should not normally be referred, since the IA can only give the same punishments as the governor (with the exception of payback punishment and rehabilitative activities as a condition of a suspended punishment).

6.59 In addition, as per paragraph 4.38, it may be necessary or expedient for a governor to refer a case to the IA where added days cannot be given, for example where determinate and indeterminate sentence prisoners are jointly charged (for example, with fighting) may both be referred to an IA for the cases to be heard together.

6.60 If one of a group of related offences by the same prisoner is referred to an IA, the other charges will also be referred. Similarly, if one of a group of related offences by the same prisoner is referred back to the governor by the IA (see paragraphs 6.67-6.68), the other charges will also be referred back.

Reasons for referral to the IA

6.61 The governor must state their reasons for referral on the record of hearing (DIS3), as giving no reasons or quoting 'seriousness of the offence' alone will mean the case is sent back to the governor for inquiry and cannot be re-referred to the IA for consideration of added days even for an extremely serious offence (see paragraph 4.43) for example, if a governor

referred a case that was simply a charge of disobeying an Officer, with no other aggravating features. This means that serious rule breaking cannot be given added days by the governor who will have to hear the adjudication and does not assure victims that proper justice has been done. Adjudicating governors should not use printed stamps with blanket reasons for referral to the IA.

6.62 Adjudicating governors must not rely on the fact that a matter has been previously referred to the police or the facts of the case to justify referral to the IA. The reasoning must demonstrate why the test for seriousness below has been met and explain why the police referral was rejected. This may include factors such as: what happened, impact on the regime, any injuries, if the disobedience is repeated, or risk to security, order and control, or safety. Care should be taken not to compromise their independence; staff must not discuss individual cases with the IA.

6.63 For crimes committed in prison which are not referred to the police in line with Annexes A and B of the Crime in Prison Referral Agreement (see paragraph 6.52), full reasoning for referral to an IA must be given to ensure cases are not referred back to governors for a police referral. This may be where the governor has determined that the internal disciplinary process through an IA hearing is more likely to receive an effective justice outcome.

6.64 The DIS3 should contain reference to any adjournments, decisions to refer the charge and the full reasons for making the referral. The chronological order of any decision-making should be included, including dates and the date the prisoner was informed of the IA hearing. If a case is being re-referred to the IA following a referral back to the governor for review for a police referral, the reasons must be clearly stated in the DIS3.

6.65 The test for seriousness (see paragraph 6.58) is whether the offence poses a very serious risk to order and control of the establishment, or the safety of those within it. Each case will be assessed on its merits, but the following offers some guidance:

- Serious assaults should always be referred. An assault is classed as serious if it is a sexual assault, it results in detention in outside hospital as an in-patient, it requires medical treatment for concussion or internal injuries, or where the injury is a fracture; scald or burn; stabbing; crushing; extensive or multiple bruising; black eye; broken nose; lost or broken tooth; cuts requiring suturing; bites; or temporary or permanent blindness. The following will also be factors to consider for referral:
    - those where the assault was pre-planned rather than spontaneous,
    - those where the alleged offender has a previous history of violence during the current period in custody,
    - the victim's role within the establishment (e.g., staff), their vulnerability, the psychological impact on the victim, and the location of the incident
- All sexual offences, including where there is a dispute about consent or reasonable belief in it (as opposed to a dispute about whether the sexual incident happened at all), should be referred to the IA (following a mandatory police referral where the police/CPS have decided to take no further action – see paragraphs 6.52-6.57). For cases of sexual harassment, they should only be referred to the police or the IA if there were aggravating factors.
- Offences of detaining or denying access may be referred if they go beyond simple obstruction, perhaps to conceal a more serious violent or drug related offence.

- An offence motivated by a protected characteristic under the Equality Act 2010 (i.e., Age, Race, Disability, Religion or Belief, Gender, Gender reassignment, Sexual Orientation, Marriage and Civil Partnership, Pregnancy and Maternity) is an aggravating factor and may merit referral.
- Hostage incidents where the victim has declined police involvement.
- A fight charge might be appropriately referred in view of its location, the numbers involved, and the extent of any injuries.
- Endangering health and safety offences might be referred if there is evidence of intent rather than recklessness, or where the risk to others was serious. Fire setting charges, irrespective of the level of damage or the prisoners' history should always be referred.
- An escape, if not prosecuted, might be referred in view of the level of physical security that was overcome by the prisoner, any injuries to other people, and any damage to property.
- MDT failures or other drug-related offences should not automatically be referred, but referral may be appropriate if Class A or a large quantity of other drugs is involved, or if the establishment has a particular local drugs problem it wants to deter. MDT refusals and drug smuggling will normally be referred.
- Referral of possession of unauthorised article cases will depend on the nature and quantity of the item(s). Lethal weapons, Class A drugs, or large quantities of other drugs, will usually be referred. Similar criteria apply to selling or delivering or taking improperly. Mobile phone cases should be referred where governors deem there is justification for the referral including forensic evidence. Phones without internet connection also pose a security risk and should not be excluded.
- Threatening, abusive or insulting words or behaviour may be referred if there are aggravating factors but not normally otherwise.
- Refusal to obey lawful orders relating to MDT or searching, or other control issues, will normally be referred.
- Attempts, incites or assists charges may be referred if the "foregoing charge" would have been referred (but see paragraph 7.154 on attempted assault).

6.66 If the prisoner is not eligible for additional days, or the IA does not consider them to be an appropriate punishment, any of the other punishments available in the Rules (except for payback punishment and rehabilitative activities as a condition of a suspended punishment) may be imposed, if the charge is proved.

Referrals back to the governor from the IA

6.67 Following a charge being referred to the IA, the IA will consider the reasons the governor has given for the referral (as outlined above in the seriousness test in paragraph 6.61) or any other reason why it would be appropriate for the IA to consider it (as per paragraph 4.38) and may:

- Refer the case back to the governor to hear the case instead where the justification for referral is insufficient or they do not agree with the seriousness of the charge. The governor must re-open the hearing as soon as possible and inform the prisoner of the IA's decision and proceed with the hearing. In this circumstance, the governor cannot

re-refer cases back to the IA. The prisoner will lose their automatic right to legal representation once the IA has referred their case to be inquired into by the governor.

- Refer the case back to the governor to review for a police referral where they consider the charge warrants a greater punishment than additional days. However, there will be cases where the victim decides they want a police referral and the governor must make this referral. This can happen at any time during the IA hearing up to the finding of guilt and before a punishment is imposed. The governor must re-open the hearing as soon as possible, considering the evidence and witnesses available and decide whether a police referral is the most appropriate action.
    - If the governor decides to refer the case to the police, the procedures in paragraphs 6.52-6.57 must be followed and the governor has one final option to re-refer back to the IA to conclude the case, where the police do not take it forward, considering the principles of natural justice. The IA cannot refer it back to the governor again.
    - If the governor decides not to refer the case to the police, the governor can refer it back to the IA to conclude the case. The IA cannot refer it back to the governor again.

6.68 The IA and governor will record and explain their reasons for any referrals between them in the DIS3 and notify the prisoner at the hearing of their decisions. Any related charges from the same incident will also be referred back. Staff must also ensure that any referrals back to the governor or IA are clearly documented in the IA1 and IA3 forms for the information of the CMO and a note made on the prisoner's record.

Arranging and preparing for IA hearings

6.69 A flowchart summarising this process is available at Annex A. All Independent Adjudications will take place virtually using the laptops provided for this purpose to each prison (guidance on preparing for virtual hearings is provided at paragraphs 6.69-6.85), unless the IA deems a hearing should be held face-to-face in the interests of justice. Regional SPOCs and prison SPOCs have details of the Cloud Video Platform (CVP) room, where the hearings will take place. Each prison has a URL link and PIN number assigned to them for use when hosting an IA hearing. Staff have responsibility for the security of the laptop for virtual Independent Adjudications. Laptops must never be left alone in a prisoner's possession and must be accounted for at the end of each session and locked away in a secure area when not in use. The IT Service Desk (0800 917 5148) can answer questions regarding technical issues with laptops, such as being unable to connect to the internet or if the laptop will not turn on.

6.70 In certain circumstances, the IA may exercise their discretion and consider that the hearing should take place in person in the interests of justice to ensure common law fairness and compliance with Article 6. The IA will inform the prison of their decision and the hearing will be adjourned for the CMO and the prison to arrange for a case to be heard in person (see paragraphs 6.70 and 6.86-6.90 for the protocol and guidance on arranging in person hearings). If one charge is being heard in person on a particular day, it may be appropriate for the other charges listed on that day to also be heard in person. The CMO will liaise with the IA and the prison to determine the most appropriate procedure for this on a case-by-case basis. Where a hearing does take place in person, legal representatives should be informed and given the opportunity to attend the prison.

6.71 If the case is referred to an IA for the first time, the hearing must be arranged within 28 days of referral – the day of referral counts as day one of the 28. The IA will dismiss cases that

have exceeded the 28-day legislative deadline. If the case has been re-referred to the IA following a referral back to the governor for review (see paragraph 6.67), the 28 day-legislative deadline does not apply but the hearing should be arranged as soon as possible to ensure fairness to the prisoner accused. For all referrals, prison staff should notify the CMO as soon as possible using form IA1 (New Referral Form), which should be emailed to: gl-ind.adjudication@justice.gov.uk. Any cases being re-referred to the IA, must be clearly marked on the IA1 form and include any explanation. Prisons should not add on new referrals to a virtual IA hearing list without making the initial referral to the CMO. The reason for all referrals must be recorded on the DIS3 (see paragraph 6.61). Any accompanying victim personal statement and Prison Community Impact Statement where there was a Police referral should be discussed with the police on a case-by-case basis and depending on the views of the police and the victim, should also be sent to the CMO with any prison damage impact assessment.

6.72 The CMO will confirm the date and time of the hearing in a Booking Letter, where the IA's contact information can also be found. Reporting officers and/or witnesses should be informed of the hearing date and wherever possible, make themselves available to attend the IA hearing to give evidence if required, to avoid cases being dismissed. In a virtual hearing, the IA will normally consider 15 charges per sitting. If there are more than 15 charges, the prison should prioritise these according to the 28-day deadline, and liaise with the IA to ask if they would be happy to receive any additional charges or whether another hearing date should be organised with the CMO.

6.73 The prisoner should be informed as soon as possible and any request for legal advice/representation should be facilitated. To prepare for a hearing, prisoners should be given access to this Policy Framework when requested and offered access to the DIS2 Easy Read if needed or requested. Before any IA hearing, prisoners should be handed IA5 (Prisoner Independent Adjudication Information Form) (see Annex A) which informs them of their IA hearing, and allows them to arrange legal advice/representation by providing details of their legal advisor/representative, so that the prison can make the necessary arrangements. The prisoner's right to legal advice/representation remains unaffected and all requests must be facilitated including access to evidence as outlined in paragraph 4.24. This can be done by telephone. If the prisoner chooses to have legal representation for the hearing, the name, email address and contact for the legal representative must be obtained as soon as possible.

6.74 If the case has been re-referred to the IA following a referral back to the governor for review, the prisoner must be informed and given another opportunity to arrange legal representation. The governor should issue the prisoner with a Prisoner IA Information Form (IA5), requesting the legal representative's details and confirming whether they have changed since the initial hearing. The legal representative should be contacted to inform them that the case is back with the IA and of the date of the next scheduled hearing should the prisoner wish for them to attend, as per the usual process. Any information given previously by the prisoner should not be relied on as their legal representative may have changed since the initial referral.

6.75 It is important that all paperwork (including the DIS1 and DIS3) is correctly emailed to the IA directly as soon as possible but at least 48 hours (excluding weekends and bank holidays) before the hearing. For example, if a hearing is scheduled for Monday at 9am, the paperwork must be sent on the previous Thursday by 9am. Otherwise, the hearing will be cancelled and rescheduling the hearing may mean the 28-day deadline for the first hearing is exceeded and will be dismissed. Any evidence that will be relied upon in the hearing should be included, but not the conduct or adjudication report. The paperwork for each charge should be sent in an email with all of the relevant paperwork for that charge. The name of the prison and the

date of the hearing should be written in the subject of the email and it is useful to include the following information for the IA too: prisoner surname; prisoner number; charge number; hearing 1 (expected running order of the hearing on the day if known). Documents should preferably be Microsoft Word documents, with careful attention to the page ordering and legibility. Each document should be saved with the prisoner's name, prisoner number, charge number and name of document e.g., Smith, A000987, 1023, DIS3.

6.76 The legal representative should be sent the same paperwork. Any adjudication and/or conduct report that will be relied upon in the hearing should also be included.

6.77 The virtual invitation/link must be sent to the IA, as soon as possible but at least 24 hours (excluding weekends and bank holidays) before the hearing. The CMO (gl-ind.adjudication@justice.gov.uk) should also be copied in. This invitation (including the full URL link and the name of the prison's hearing room) must be copied and sent separately to legal representatives or translators where relevant. A contact name and direct phone number should be included so the IA or legal representative can make contact if there are any technical issues. The IA should be contacted the hearing is running late or if there are any difficulties logging in. IMB members can also attend virtual hearings and should be sent the virtual invitation and URL link where requested. If any external parties are having difficulties logging in, they should try and use the link on different browsers.

6.78 The schedule of hearings should be organised in the running order of the day. Hearings where a legal representative is involved could be scheduled for earlier in the day, to provide the legal representative with a more accurate time slot. Time must be facilitated prior to the hearing for the lawyer to speak with their client, again this can be done by telephone. Hearings will start from 9.30am, unless advised otherwise by the CMO.

6.79 If a case has been referred to the IA and the prisoner is then transferred to another establishment (at any point in the process before their scheduled hearing), governors of the sending and receiving prisons should make use of their virtual adjudication laptops, to arrange for the prisoner, legal representative, reporting officer and witnesses to attend the hearing (and provide evidence) virtually, as appropriate. The relevant paperwork should be emailed from the sending prison to the receiving prison, who will subsequently arrange the hearing and inform all parties. Prisons must inform the CMO (gl-ind.adjudication@justice.gov.uk) by completing the IA2 (transfer form) as soon as possible, clearly stating the receiving establishment that the hearing will take place at. IAs will consider whether an in-person hearing is required and record their justification for this, having regard to the need to ensure common law fairness and compliance with Article 6, on the facts of each individual case. In these cases, the governors of the sending and receiving prisons will decide whether to return the prisoner to the sending prison for the IA hearing, or whether the reporting officer and witnesses should attend the receiving prison to give evidence at a hearing to be arranged there. Arrangements can continue to be made for the reporting officer or other witnesses to appear virtually at the hearing.

6.80 In some cases, it may no longer be deemed suitable to continue with the adjudication that has already been referred to the IA, for example because of a hospital admission or release. In this case, a prison can withdraw a referral so that it does not have to go back before the IA to be dismissed. Please note that if a charge is withdrawn in this way, the governor cannot deal with this matter within the establishment. The prison should directly contact the CMO to withdraw the referral, clearly stating the reasons behind this decision.

6.81 If a prisoner refuses to leave their cell and attend the IA hearing, staff should inform the prisoner that the IA may proceed in their absence and award added days to the prisoner's

time in custody. The prisoner should be given a Refusal to attend form (see Annex A), and be given the opportunity to state their reasons for refusing to attend. If the prisoner refuses to sign the document, the officer should note this on the form, also noting any reasons raised verbally by the prisoner. This should be completed and dated and signed by the officer and a copy saved to present to the IA. If the prisoner still refuses to attend, staff should inform the IA who will record the reasons why the prisoner has refused to attend and the source of that information, together with the reasons why they concluded that proceeding with the hearing in the absence of the prisoner was just and fair under all the circumstances, on the adjudication record (see paragraphs 6.32-6.35).

6.82 A separate private room and telephone must be available during the hearing. This can be used if the legal representative needs to speak with their client during the hearing. If this happens, the IA will pause the hearing to facilitate this.

6.83 A copy of the DIS7 should be ready for each hearing. To minimise the time delay to the prisoner in receiving the DIS7 Form, the IA may provide express permission during the hearing for prison staff to complete the form on their behalf. This should be done at the time of the hearing and given to the prisoner whilst the IA is still present. Enough copies of the DIS7 should be readily available to complete, so there is minimum delay to any subsequent hearings.

6.84 On completion of an IA hearing the IA3 Outcome Sheet should be sent to the CMO (gl-ind.adjudication@justice.gov.uk) to notify them of the outcome as soon as possible, but no later than 24 hours of concluding the hearing. Care should be taken to ensure that the document is legible, and that the reasons for any cases being referred back to the governor are clearly outlined. This form must include all IA cases heard and the outcomes, including whether the case was adjourned. Prisons do not need to send new referral forms for adjourned cases. However, for cases that are being re-referred to the IA, a new IA1 form must be sent to the CMO.

6.85 The CMO will send the DIS3 form to the prison. Within 48 hours of concluding the hearing, the CMO will send the DIS3 completed by the IA via email. The DIS3 may not be the same as the one previously provided to the CMO but the IA's version should be attached to the prison copy for record, which must be retained to evidence the punishment given.

Independent Adjudicators entering prison establishments

6.86 Where there is a physical IA hearing, governors should ensure the safety of an IA throughout the duration of their visit to the prison. Any known intelligence relating to threats against an IA must be passed to all staff involved in the security of the adjudication including segregation unit staff, staff escorting the IA and those escorting the prisoner and appropriate measures taken to mitigate those risks.

6.87 Abusive behaviour or threats of violence towards an IA must not be tolerated, including behaviour in the presence of, but not directed towards the IA which is nonetheless abusive or threatening. This should immediately be challenged and the situation managed to prevent any harm to the IA. Dependent on the circumstances, the prisoner should be placed on report and if it is very serious, referred to the Police.

6.88 Where a physical hearing is to take place, before IAs re-enter establishments, Governors must review previous procedures for holding IA hearings at the prison including the appropriateness of the adjudication room, for the purpose of a formal hearing to ensure they are appropriate, sharing any risk assessment with the CMO. The following good practice

protocol has been agreed between HMPPS and the Chief Magistrate. Local searching policies should be reviewed and amended to comply with the Protocol.

6.89 HMPPS/Chief Magistrate IA Protocol:

- IAs should have identity with them and produce this if required to do so.
- IAs will be subject to the same search regime which applies to all official and professional visitors to a prison, including the prison Governor. However, it should be recognised that the prison is dealing with a holder of a judicial office and IAs should not be searched in front of waiting visitors/lawyers.
- An effort should be made to 'fast track' the IA through the prison to the adjudication room.
- At no time should the IA be left alone in the establishment and they should be accompanied by sufficient prison staff to ensure their safety when being escorted through the establishment.
- An adjudication room should be provided which has been subject to a written risk assessment which will be available to the visiting IA and the CMO.
- All prisons will have an agreed local searching strategy setting out the frequency and type of searching conducted. All prisoners will be searched in line with that strategy before attending an independent adjudication.
- At all times there should be sufficient security to ensure the safety of the IA. This includes there being at least two escort staff present at all times when a prisoner is before the IA.

6.90 Prison staff must not offer comments on the offence or the offender to the IA prior to the hearing as it could lead to the IA disqualifying themselves from hearing the case.

Further good practice guidance

6.91 It is good practice to provide new IAs with an induction when they first visit a prison which could include:

- How to raise the alarm
- What alarm bells look and sound like
- Location of the adjudication room
- Evacuation routes
- Reassurance that someone will stay with them unless there are exceptional circumstances, in which case they may be locked into a room for safety while staff deal with an incident.
- What to do if there is an incident (i.e., staying out of the way and finding a place of safety)
- How to raise concerns locally

Hearing procedures – witnesses

6.92 If the case is not prosecuted nor referred to an IA, the governor will continue with the hearing and investigation of the charge.

Reporting Officer

6.93 The adjudicator should hear the evidence of the reporting officer and ask whether the accused prisoner wishes to question the officer about that evidence. The adjudicator may also ask questions. If the prisoner wishes to question a reporting officer who is not present, or not available virtually, the hearing must be adjourned until the officer is available. If the prisoner does not wish to question a reporting officer who is not present, the officer's written evidence in the notice of report may be accepted. Due to the limited capacity for visual identification and assessment of the person, teleconferencing must not be used.

Other witnesses

6.94 Other witnesses may be called in support of the charge, if the adjudicator agrees their evidence is relevant, and may be questioned by the prisoner, adjudicator or reporting officer. Written evidence may be accepted in the absence of the witness as above if the prisoner has no questions. In such cases, the record of hearing should record that the adjudicator has considered the witness's appearance to be unnecessary. If the prisoner wishes to question a witness who is not present, arrangements can be made for the witness to appear virtually if the adjudicator considers this appropriate. Physical evidence such as items allegedly found during a search, MDT reports, photographs, or CCTV/PIN phone/BWVC recordings may be introduced as part of the adjudicator's investigation. See paragraph 2.29 of PSI 30/2011 Instructions on Handling Mobile Phones and SIM Card Seizures obtained through mobile phone and SIM card interrogations and the Body Worn Video Camera Policy Framework on the use of body worn video camera footage.

6.95 Prison staff may be required to appear as witnesses and give evidence as part of their duties. Prisoner witnesses may be required to attend the hearing (without any loss of pay) but cannot be compelled to give evidence. Other people may be invited to attend but cannot be compelled to do so. Any request for the attendance of an MDT laboratory scientist or a forensic testing laboratory scientist (seizures testing) must be referred to the HMPPS Drug Testing Team (hmppsdrugtesting@justice.gov.uk). In respect of MDT and Seizures testing, adjudicators should exercise caution in seeking the advice of medical professionals such as prison doctors, nurses and pharmacists, or manufacturers of medication. Whilst such professionals will be qualified and knowledgeable concerning the effect of various substances on the human body, and can comment on the type, amount and frequency of a medication prescribed to a prisoner, they often do not have specific knowledge concerning the compounds present or absent in urine when such substances are consumed. They are even less likely to have specific knowledge of the methodologies and techniques used by the MDT laboratory to identify these compounds. It follows that if scientific advice is needed, it should usually first be sought from the MDT laboratory or seizures forensic testing laboratory. Adjudicators will need to establish the level of specific expertise held by those witnesses offering scientific evidence to MDT hearings and attach weight to their evidence accordingly.

6.96 Questioning of witnesses will need to be relevant to the current charge, and the adjudicator will intervene if questions stray into other irrelevant areas or are abusive. Adjudicators will assist accused prisoners who have difficulty in framing relevant questions and ask their own questions as necessary to clarify any points. Adjudicators will need to use their own judgment about whether to accept evidence where there may have been collusion between witnesses, or coercion to give or retract statements.

Hearsay evidence

6.97 First hand evidence from someone who was present when the alleged incident took place is preferable to hearsay, where a witness reports what has been heard from someone else, but such evidence may be accepted provided this is fair to the accused prisoner (see paragraphs 4.12 and 6.1 on evidence from temporary staff. However, where a prisoner has told someone about an incident (hearsay) but refuses to give first hand evidence at the hearing, this may cast doubt on their credibility. If the accused prisoner pleads not guilty and wishes to dispute the hearsay evidence, the adjudicator will need to assess whether, in the absence of a first-hand witness, it would be fair to accept the evidence. If not, it would be disregarded. It would not be safe to find the prisoner guilty solely on the basis of disputed hearsay evidence.

6.98 MDT confirmation test result reports and forensic analysis of seized items results reports are acceptable as evidence, even if the laboratory scientist who performed the test is not present at the hearing.

Circumstantial evidence

6.99 Circumstantial evidence (i.e., indirect evidence that an accused prisoner may have committed an offence) may be taken into account but is unlikely to be sufficient to prove a charge on its own. For example, if a reporting officer gives evidence that something was undamaged when checked and it was then found to be damaged shortly after the accused prisoner was seen going to the area, this would support, but not necessarily prove, a charge of causing damage, if the prisoner was not actually seen to damage the article. The adjudicator would still need to be satisfied that all the evidence taken together proved the charge beyond reasonable doubt to find the prisoner guilty.

Prisoner's defence

6.100 The adjudicator should invite the accused prisoner to offer a defence to the charge, whether by a written or oral statement, and to explain their actions or comment on the evidence. (See paragraph 6.129 for mitigation after a charge is proved). The prisoner's defence may include valuable indications of behavioural or support needs associated with the charge, which could assist in the choice to give the prisoner a payback punishment or to suspend a punishment with a rehabilitative activity condition if the charge is proven, and as such, should be considered thoroughly by the governor. For example, this could include where the prisoner is in debt resulting in behavioural issues. If the prisoner wishes to call witnesses, the adjudicator should ask for an outline of the evidence they are expected to give. Witnesses on behalf of the prisoner are normally allowed to give evidence, unless the adjudicator considers the evidence unlikely to be relevant, or that it will only confirm what has already been established as true. Prisoners should not be allowed to prolong proceedings unnecessarily by calling an excessive number of witnesses. If the adjudicator decides to refuse to allow a witness to be called the reasons for this must be fully recorded on the record of hearing, and must be on proper grounds, not merely administrative convenience or because the adjudicator already believes the accused prisoner is guilty.

6.101 Witnesses who have completed their evidence will not have any opportunity to discuss the case with those waiting to give evidence.

6.102 The defence of duress only applies to Prison Rules 51 (9), (10) and (11) and YOI Rules 55 (10), (11) and (12) as set out in PR 52 and 52A and YOI Rules 56 and 56A – see paragraphs 7.53–7.66. In all other cases arguments based on duress, if considered credible, will only be relevant to mitigation. The case law, Ryan Wilson vs the Independent Adjudicator and the Secretary of State for Justice [2016] EWHC 176 (Admin) concurs with this.

6.103 After hearing all relevant evidence the adjudicator will consider whether the charge against the accused prisoner has been proved beyond reasonable doubt, and, if it is not proved will dismiss the charge (paragraphs 4.48 and 6.106-6.107).

Evidence of further offences

6.104 If evidence given during the hearing indicates that further offences may have been committed, either by the accused prisoner or another prisoner, charges may be laid in respect of those offences within 48 hours of their discovery. If, during the hearing, it appears that the current charge cannot be sustained but a different offence may have been committed, the original charge may be either dismissed or 'not proceeded with', and new charges laid, again within 48 hours of the discovery of those offences (e.g., if a fight charge is replaced with an assault charge).

Allegations against staff

6.105 If allegations against a member of staff are made before, or during a hearing, the adjudicator will need to consider whether the accusations are relevant to the current charge. If they are not relevant the person making them will need to be advised to make a written statement outside the adjudication, and the accusations may be investigated separately. The hearing may then proceed as normal. If the accusations are or may be relevant to the adjudication the adjudicator will need to either investigate them during the course of the hearing, through questioning the accused prisoner and witnesses, or, if this is not practical, adjourn for a separate, full investigation. Any evidence that comes to light as a result of this investigation will either be taken into account during the resumed adjudication and made available to the prisoner at least two hours before the hearing, or, if it is not presented as evidence at the hearing, the adjudicator will need to take no account of it in connection with the adjudication. Adjudicators who become aware of any findings of the investigation that are not presented as evidence may decide that they are no longer de novo and hand the case over to a different adjudicator.

Proof beyond reasonable doubt

6.106 An adjudicator satisfied beyond reasonable doubt that a charge has been proved will find the prisoner guilty or, if not satisfied, will dismiss the charge.

6.107 In order to be satisfied that the evidence presented at the hearing has established guilt beyond reasonable doubt the adjudicator will take account of criteria provided in Section 7.

Procedure for the recovery of monies for damage caused by prisoners to prisons and prison property

General Principles

6.108 The main aim is to recover the cost for the destruction of or damage to a prison or prison property. It is not used as a punishment but a way of compensating HMPPS for the loss. The intention is that the prisoner is required to "put right" the damage caused (such as replacement of the item or paying for the damage to be repaired) and there is no punitive element to the amount the prisoner is required to pay back.

6.109 A requirement to pay compensation can be made for up to 100% of the damage caused, including labour costs (see paragraph 6.117) but the maximum cannot exceed the value of the damage caused or, in any event, exceed £2000.

6.110 The stipulation to pay 100% of the cost of the damage caused will be made following a finding of guilt for a charge under Prison Rule 51 (17) or 51 (17A) or YOI Rule 55 (18) or 55 (19)

unless there are sufficiently compelling reasons to make a lesser award, including reducing it down to zero. Such reasons may be where the prisoner has acted completely out of character and in response to very distressing personal circumstances, or where there are identified issues around financial hardship which can fuel poor safety outcomes, potentially leading to bullying, debt, and violence.

6.111 Payment can be by way of deductions from all three prisoner accounts (Savings, Private Cash and Spends) and can be in the form of (i) a lump sum; (ii) periodical deductions; or (iii) a combination of the two. The recovery process must cease on release from prison custody (excluding Release on Temporary Licence (ROTL)) but the amount owing under the compensation requirement will remain outstanding until two years after the imposition of the award or until the prisoner has reached their Sentence Expiry Date (SED), whichever occurs first, and regardless of whether or not the full amount has been paid. After this time no further money will be recovered from the prisoner.

6.112 Therefore, if a prisoner is recalled to custody on a sentence that was being served when the compensation requirement was imposed the balance of the debt can be recovered provided the time limit has not expired. Similarly, if an unconvicted prisoner is bailed and then returned to custody on the same charge(s), recovery can continue. To ensure that the money is recouped from a prisoner upon their return to custody, finance staff should run periodic damage obligation reports for completeness. Recovery must not continue if the prisoner is returned to custody solely on a different sentence/charge. Therefore, staff need to ensure that the prisoner's records are updated accordingly and that deductions do not exceed the amount imposed or the time limit.

6.113 Recovery of any outstanding debt must continue when the prisoner transfers from one establishment to another. If transferred from a contracted to public sector prison, the Prison-NOMIS system must be updated with the obligation prior to transfer or the receiving public sector prison informed at the earliest opportunity of all the details including the amount paid and supporting adjudication number. If received into contracted sites, their account balances must be cleared from Prison-NOMIS and the obligation screen checked in order to transfer any information if required.

6.114 Immigration detainees and foreign national prisoners held within the prison estate are subject to Prison Rules and not Detention Centre Rules so are therefore treated as unconvicted prisoners with the same rights and responsibilities as unconvicted prisoners (PSO 4600 Unconvicted, Unsentenced and Civil Prisoners). When a foreign national prisoner has reached the end of their custodial sentence but continues to be held under immigration powers, they are treated as an unconvicted prisoner. Consequently, when an immigration detainee or foreign national prisoner has intentionally destroyed or caused damage to a prison or to prison property, they can also be subject to a requirement to recompense the prison for the cost of replacing these items or property. The adjudicator therefore has the power to stop or deduct monies from an immigration detainee's earnings, where they have chosen to work and where they are found guilty under this offence, as well as from any other prison accounts.

6.115 Paragraph 6.13 indicates that "it would not normally be appropriate to lay disciplinary charges where the prisoner's actions were related to self-harm or preparations for it".

Procedures and matters for Adjudicators

6.116 At the start of the hearing Adjudicators will inform the prisoner that, if found guilty, they will be required to pay compensation for the damage caused and that monies will be recovered from their prison accounts to fulfil that requirement, unless there are sufficiently compelling

reasons to make a lesser award. They will also indicate the estimated total value of the damage caused and to assist with their considerations, an assessment of the cost of the damaged caused must be available to the adjudicator (see paragraph 6.117).

6.117 To assist in assessing the cost of the damage, staff can contact ircpe@justice.gov.uk for any advice on costings for the charges of replacing the majority of items. Adjudicating governors need to assess the cost of damage on a case-by-case basis, taking appropriate account of any local issues which may affect the costing of materials. Also, and to ensure the adjudication process is not unnecessarily delayed, where there is no better evidence available for the cost of labour, a figure of £19.41 per hour can be set. This is based on a generic cost of prison staff time but, for the purposes of this process, it applies equally to a contractor's time where there is no better evidence of their actual cost.

6.118 If a prisoner is found guilty and a compensation requirement is given, adjudicators should ensure that they:

- Specify the total amount to be recovered - there is a presumption that this will be the full value of the damage unless there are sufficiently compelling reasons to make a lesser award including reducing down to zero. The amount must not exceed £2000 and never exceed the actual value of the damage caused. Adjudicators must not concern themselves with the process of recovery or attempt to set weekly deductions.
- Make it clear that the process of recovery will be determined outside of the adjudication but that a minimum of no less than £5 will be left in their accounts after payments towards the damage have been taken.
- Explain that the debt will last for a maximum of two years from the date of the award or until the prisoner's sentence expiry date, whichever occurs first and regardless of whether or not the full amount has been paid.
- Do not suspend the compensation award as the recovery of monies is not a punitive award.
- Do not impose a stoppage of, or deduction from, earnings as a punishment, as this may impede the recovery of monies for the damage caused. However, it will remain open to the Adjudicator to award another punishment(s) for the behaviour as listed in the Rules such as a loss of privileges, as long as the response to the rule breaking is proportionate and does not exacerbate any identified hardship.

6.119 The prisoner will be given the opportunity to raise any mitigating factors and these are to be recorded in the record of hearing.

6.120 An example of the wording for a notification of an award is as follows: *"It is estimated that cost of repairing the damage you have caused is £30. Having taken into account the evidence made available at this adjudication, including your representations, I am making an award for recovery of £30 for the damage. Outside of this adjudication the prison will assess how much will be deducted from your accounts at this stage. Any remaining balance will be recovered as and when further monies become available. You will be left with a minimum amount in your prison accounts, to be determined, but it will be no less than £5.00 per week after any deductions for this compensation award are taken. Any outstanding debt will last for a maximum of 2 years or until you have reached your Sentence Expiry Date, whichever occurs first."*

6.121 The DIS7 – Adjudication Result Form, includes a section for the recording of the award for recovery of monies in respect of the compensation requirements.

6.122 If possible, where any damage has been caused it should be photographed and a copy made available to the Adjudicator.

6.123 Following an award for compensation, the governor needs to take into account the prisoner's individual circumstances and determine the minimum amount that they should be left with in their accounts after deductions are made for compensation towards the damage caused. This cannot be less than £5.00 and any consideration should include, but is not limited to:

- The prisoner's need to maintain contact with family/friends.
- The need to purchase any necessary items.
- Any specific needs on ROTL or release, if appropriate.
- When considering the recovery of monies from children (under 18s), governors must pay particular attention to the requirement to protect and safeguard their welfare and the heightened need to maintain family contact.
- Any needs related to caring for a child in a prison Mother and Baby Unit. Any benefits (such as Child Benefit) which are paid to a mother for the purposes of looking after her child should not be subject to deductions. Furthermore, consideration should be given to whether any deductions from a mother's account might have a negative impact upon the care of the child and if so, no such deduction should take place.
- Whether the prisoner has agreed to complete any payback punishment to pay back for the damage they caused by undertaking a project to benefit the prison.

6.124 They also need to decide how much can be taken from the prisoner's accounts by way of a lump sum (this will be everything that is available above the minimum set by the Governor) and arrange for any outstanding balance to be recovered as soon as any monies above the minimum become available. This will be before any monies are authorised for purchases or sent out of the prison from the prisoner's accounts. The prisoner should be informed of the decision on the form in Annex A below.

6.125 Adjudicating governors will need to ensure that recovery does not adversely impact on our aim to reduce reoffending by causing prisoners financial hardship on release. Discharge grants are exempt from deductions. If a prisoner has insufficient monies to contribute even a small amount to the damage caused whilst still allowing the minimum £5.00 in their accounts, then no money should be taken from their accounts. The minimum amount can be re-assessed in order to take into account any change in the prisoner's circumstances but the minimum cannot be readjusted for punitive reasons and not be lower than £5.00. So, for example, it is permissible for the minimum to be increased or decreased because the individual's needs have changed. However, whilst deterioration in behaviour may trigger a review, it is not permissible to reduce the minimum because of that behaviour.

6.126 If a prisoner is found guilty of a further incident of damage the Adjudicator will be required to make a separate award for recovery of monies for that incident. However, the recovery of the debts will run consecutively i.e., the recovery of the first debt is required before commencing recovery of the second.

6.127 Finance staff must be familiar with the financial aspects involved in the recovery of monies from prisoners in relation to damage to prisons and prison property, including updating Prison-NOMIS and the prisoner's record to reflect the terms of the debt and any balance owed. Deductions are to be made before the canteen sheets are printed in order to ensure that prisoners are not misled about the amount they are able to spend. Any monies recovered

will be retained by the prison making the deduction and not transferred to the prison where the damage occurred or to HMPPS centre. This is to minimise administrative costs. The appropriate account code will need to be used to identify the amounts collected (see the HMPPS Finance Manual Policy Framework for further information).

Punishments

6.128 The local punishment guidelines should provide for more severe punishments where a prisoner has been found guilty of a charge under Prison Rule 51 (1A, 17A, 20A and 24A) and YOI Rule 55 (2, 19, 23 and 28) i.e. a charge aggravated by, or relating to, a 'protected characteristic' under the Equality Act 2010 (i.e., age, race, disability, religion or belief, gender, gender reassignment, sexual orientation, marriage and civil partnership, pregnancy, and maternity). More than one punishment may be given for an offence (other than if a caution is given), but the total must be proportionate to the offence. Any punishment the adjudicator may impose, if the charge against the prisoner is proven and they are found guilty, must be proportionate and limited to the maximums set out in the Prison or YOI Rules (see Section 7 for a list). Adjudicators may decide to go outside the ranges set out in the local punishment guidelines in individual cases (but not over the maximums in the Rules) but will record their reasons for this in the record of hearing. No 'unofficial' punishments (i.e., any punishment not sanctioned by the Prison or YOI Rules), nor any 'group' punishments may be given.

Mitigation

6.129 When the adjudicator has decided that the charge is proved the decision will be announced and recorded on the record of hearing. The accused prisoner or legal representative (if any) will be asked whether they have anything to say in mitigation (i.e., any reasons why the punishment should be less severe than the normal punishment for that offence, under the local or IA punishment guidelines). The prisoner may wish to call witnesses in support of the mitigation, and any evidence given in this connection must be recorded.

6.130 The adjudicator must consider the appropriate punishment(s), taking into account:

- the seriousness of the offence
- local punishment guidelines in relation to that type of offence
- the prisoner's previous disciplinary record
- any behavioural or support needs which were factors leading to the offence being committed, including where their behaviour stems from a threat response
- the likely effect of the punishment/s on the prisoner (including any health, welfare, or financial hardship impact)
- any mitigation the prisoner may offer
- if the punishment and the location of punishment would have a detrimental impact on any member of staff
- if the prisoner is on an open Challenge Support Intervention Plan (CSIP). If a prisoner has had an adjudication due to violent behaviour but is not on a CSIP, consideration should be given as to whether they may benefit from a CSIP referral.

Conduct Report and Adjudication Report

6.131 The adjudicator will then request a conduct report (DIS6) from wing staff on the prisoner's behaviour during their current sentence, and an adjudication report (DIS5) on their

disciplinary record during their current sentence. The conduct report should not be completed by the reporting officer - it should include what progress a prisoner has made whilst they have been on an open CSIP, as well as the prisoner's individual risk factors for violence. For example, if there has been a pattern of positive behaviour prior to the disciplinary offence taking place (unless this is an adjudication arising from an incident that does not relate to violence). Similarly, for those prisoners who are on an open ACCT or who have a history of self-harm, any particular risk factors for self-harm should be included. The prisoner will be allowed to question the authors of these reports. Where the adjudication report asks for information about the prisoners' adjudication history, only offences the prisoner committed at the current establishment should be considered.

6.132 The adjudicator will then consider appropriate punishment(s), adjourning if necessary, and taking account, among other things, of:

- The circumstances and seriousness of the offence, and its effect on the victim (if any)
- The likely impact on the prisoner (including any health or welfare impact), the prisoner's age, behaviour in custody, and remaining time to release. Adjudicators take account of the risk factors listed on an open or recently closed ACCT plan (within the last three months).
- The type of establishment and the effect of the offence on local discipline and good order, and the need to deter further similar offences by the prisoner and others.
- Any guilty plea, ensuring that the prisoner was not pressured into this plea, and that the decision is based on evidence, not just the plea.
- Any behavioural or support needs associated with the offence committed that have been identified throughout the course of the hearing and which could be addressed or supported through payback punishment or a rehabilitative activity condition.
- Any specific trauma informed needs of women in custody (see Women's Policy Framework).

Informing the prisoner of the punishment

6.133 If the governor is considering payback punishment or a suspended punishment with a rehabilitative activity condition, before they offer it, they should explain clearly to the prisoner why it is being offered. This includes the link between the charge and underlying cause of their rule breaking that the payback punishment or rehabilitative activity condition intends to address and the expectations of the prisoner so that they fully understand what they are agreeing to, if accepted. Payback punishment and rehabilitative activity conditions should not be forced on the prisoner; they should be willing to undertake it for it to have the best prospect of having its intended effect. If they are not willing to undertake payback punishment or rehabilitative activity conditions, they should not be imposed, and alternative punishments should be considered.

6.134 The adjudicator will announce the punishment(s), including whether they are suspended, any previously suspended punishments being activated, and whether punishments for more than one charge are to be consecutive or concurrent; at the same time completing the punishment section of the DIS3 including the period a punishment or suspension is to last, the percentage of any earnings to be stopped, and specifying any privileges to be forfeited. The governor must record their reasons for offering payback punishment or a rehabilitative activity condition to the prisoner and the prisoner's agreement to undertake it.

6.135 The adjudicator will then explain the punishment(s) to the prisoner (if necessary) and any requirement to pay compensation (if necessary), hand them the DIS7 form giving details of the punishments and advise on the procedure and time limits for requesting a review of the decision. The DIS7 should be clearly filled in by the adjudicator. In the case of a payback punishment or rehabilitative activity condition, it is important to explain to the prisoner what it will involve, and how their engagement will be monitored. The prisoner should also be informed that they will be provided with exact details of their payback punishment or rehabilitative activity as soon as practicable following the conclusion of the hearing. Once the details of the payback punishment or rehabilitative activity have been finalised, the prisoner should be given the relevant compact to agree to and sign for payback punishment and rehabilitative activity conditions, containing the expected behaviours and details of the project or activity. Relevant staff, including those who will have responsibility for monitoring the prisoner's progress with the payback punishment or rehabilitative activity, Keyworkers, OMU staff, and other staff involved in the prisoner's progression and/or sentence, must be informed.

6.136 Adjudicating governors may impose any punishment other than additional days. IAs may impose any punishment including additional days (other than payback punishment or rehabilitative activity conditions). IAs are issued with national guidelines on ranges of additional days by the Senior District Judge (Chief Magistrate) which are available on gov.uk (see Annex A).

6.137 Staff responsible for prisoners' monies must be informed of any punishment of stoppage of earnings or forfeiture of the privilege of access to private cash, including awards of compensation payments made against prisoners for damage to prisons and prison property (see paragraphs 6.116–6.118) and act accordingly. Wing staff must be informed of any other forfeiture of privileges.

Suspended punishments

6.138 All punishments (other than prospective additional days – see paragraph 6.167) take effect immediately, unless they are suspended or ordered to follow another punishment consecutively (or when a punishment is changed following a review). An individual punishment may not be partially suspended, but if more than one punishment is given for a single offence some may be activated immediately, and others suspended. Any punishment other than a caution or payback punishment may be suspended for up to six months.

6.139 There are two types of condition that can be attached to a suspended punishment:

- Firstly, that the prisoner is not found guilty of a further offence (committed after the offence for which the suspended punishment was imposed) during the period of suspension (up to six months). This condition can be applied to any suspended punishment, other than a caution or payback punishment.

- Secondly, for governor hearings, that the prisoner undertakes a rehabilitative activity or activities as specified by the governor, during the period of suspension (up to six months) which will support them to address their behavioural or support needs underlying the offence(s) they have committed. For example, this could include a referral to substance misuse services, peer support, mediation, access to support packs or workbooks, etc. This condition can be applied to any suspended punishment, other than a caution, payback punishment, or added days.

6.140 Only one type of condition may be applied to a suspended punishment, meaning that prisoners can either be subject to the condition not to commit further offences, or to comply

with one or more rehabilitative activity conditions during the period of suspension. This is because activating the suspended punishment on the basis that the prisoner has reoffended during the suspension period, may discourage further progress with their rehabilitative activity condition.

Rehabilitative activity conditions

Purpose

6.141 Rehabilitative activities should provide opportunities for prisoners to address the root cause(s) of the behaviour which led to the rule break, contributing to improved safety outcomes. The rehabilitative activities should focus on one or more of the following:

- Teaching prisoners new skills to help them stop the behaviour that led to them breaking the prison rules.
- Providing prisoners with support to understand their behaviours and needs and make effective and lasting behavioural change.
- Encouraging prisoners to make amends with their prison community and/or victims for their wrongdoing and to demonstrate behaviours which are positive, helpful, and intended to promote social acceptance.

Offences appropriate for a rehabilitative activity

6.142 Activities must be linked to the reason behind the offence that led to an adjudication. Adjudicating governors should consider whether the offence may have been motivated by an underlying need which the prisoner needs support with. For example:

- It is already a mandatory requirement under PSO 3601 (Mandatory Drug Testing) that prisoners will be referred to substance misuse services for an MDT failure and supporting guidance outlines that adjudicating governors should consider whether support or punishment is the best response to a charge for MDT failure. To complement this, if a prisoner was intoxicated, in possession of substances for personal use, or has failed an MDT, the adjudicating governor can now consider whether to link engagement with substance misuse services to a suspended punishment. In addition, they can also consider other local support such as peer support, Narcotics Anonymous, or Alcoholics Anonymous, for example.
- If a prisoner is engaging in interpersonal conflict, committing, or threatening an act of violence, or demonstrating aggression, this may suggest that the prisoner would benefit from help with their impulse control, emotional regulation, or response behaviours through peer or pastoral support or engagement with psychology services.
- If a prisoner has done something that has negatively impacted another person directly, this could indicate that the prisoner and their victim(s) might benefit from mediation, letter-writing, or other restorative justice activities.

Setting rehabilitative activities

6.143 Prisons should work with their providers to establish a local catalogue of rehabilitative activities that can be offered as a condition of a suspended punishment, drawing on their local menu of tier 1 and/or tier 2 purposeful activities (from the National Regime Model) which have been approved as part of their agreed Regime Plan. Prisons are encouraged to innovate and use the facilities and resources available at their establishment, consulting with partners, staff, and prisoners to find suitable rehabilitative activities, using adjudication

standardisation meetings to discuss appropriate activities and review the catalogue. Adjudicating governors may opt for an activity outside of the local catalogue if they identify an alternative ongoing opportunity. Any activities which are not already recognised on the DPS activities service, will need to be created under 'foundational activities' to ensure prisoners can be unlocked to attend them. For structured rehabilitative activities to help the prisoner address their attitudes, thinking, emotions, and behaviours, governors should refer to the National Framework for Interventions Policy Framework for further guidance, which draws on a strong evidence base to ensure the activities are likely to make a difference and not inadvertently cause harm.

6.144 Rehabilitative activities may include, but are not limited to:

- Engagement with substance misuse services.
- Engaging with prison psychology services.
- Undertaking informal courses, third sector-led activities, or engaging with other peer or pastoral support.
- Engaging with any Restorative Justice activities that are available to the prison (refer to the Restorative Justice Hub for advice, if needed), such as mediation or letter-writing.
- Engaging with appropriate and available debt management support, including through key work.
- Undertaking recreational, social, or specialist unit activities, such as artwork, peer group work, or prisoner-led enterprises, which may include tier 1 or tier 2 purposeful activities.

6.145 Adjudicating governors should set rehabilitative activities based upon the need of the individual. This includes considering the prisoner's mental and physical wellbeing; their safety and that of others in the prison; neurodiversity and any associated reasonable adjustments; protected characteristics; and any other factors of note to the governor. Adjudicating governors should consider what would be manageable for the prisoner according to their needs and differences and consider whether it would be more beneficial to create a series of smaller activities for them to complete over time, to encourage them to take continual small steps towards rehabilitation and behaviour change in the longer term. The governor should also consider any previous support the prisoner has had to help tailor the support offered as part of the rehabilitative activity conditions.

Assigning rehabilitative activities

6.146 As arrangements will need to be made prior to the commencement of the rehabilitative activities, they will take effect, but will not necessarily start, immediately following the adjudication hearing. However, prisoners should be able to access the rehabilitative activities within a reasonable timeframe following the hearing. This can be determined locally; however, it should not be longer than a four-week period. Some types of activities, such as referrals to substance misuse services or psychology services, may continue for the duration of the suspension period, during which time the prisoner must show compliance, whilst other activities, such as letter-writing or mediation, may constitute one or more individual sessions, each of which must be completed before the end of the suspension period. Should a prisoner be transferred to another prison after a suspended punishment with rehabilitative activity has been given, but before it has begun or concluded, it will be a decision for the receiving prison whether it will be permitted to continue.

6.147 To enable this, governors should factor in the availability of spaces and any waiting lists for rehabilitative activities when offering them to prisoners, consulting with relevant providers to ensure there is resource. If it would not be possible for the rehabilitative activities to begin within four weeks, governors will have the discretion to extend this period, or consider alternative punishments instead.

6.148 To fully engage prisoners in the process, and encourage their motivation, it is advised that they are involved in the discussion about what the activities will be, including being given the opportunity to provide suggestions. Prisons have discretion to develop processes that enable the governor to offer rehabilitative activities as a consequence of the adjudication. This can either be during the hearing or afterwards, provided the prisoner is told the type of rehabilitative activity, and the time within which it must be completed (i.e., the length of the suspension period, which may not exceed six months) at the hearing.

6.149 A multidisciplinary approach may be taken where the governor adjourns the case to consult relevant staff before fully defining the exact details of the activity. This should include any relevant service providers and facilitators and may also include the prisoner's Keyworker (where applicable) and the prisoner's Prison Offender Manager (the level of consultation required with the Prison Offender Manager will depend on the current stage of the prisoner's sentence). It will also be important to ensure that, where relevant, the victim of the offence is willing to engage in certain activities, such as mediation, or other forms of restorative justice.

6.150 A governor must sign off the final rehabilitative activities. The arrangements of the activities must be clearly explained in person and the activities detailed in the rehabilitative activity compact for the prisoner to sign (see rehabilitative activity compact at Annex A). Although this may be done in the adjudication setting, the prison may decide who is best placed to inform the prisoner and the adjudication is not required to be reconvened. The prisoner's Prison Offender Manager must be informed of the outcome. Once the activities have been finalised, the DPS record of the adjudication must also be updated to include details of the activity, including the type of activity, the level of engagement; the length of the suspension period; and the named member of staff responsible for monitoring the prisoner's progress (per the compact).

6.151 Adjudicating governors should ensure that prisoners who have received rehabilitative activities as a condition of a suspended punishment are not unduly prioritised over other prisoners who have been referred to those activities, services, or specialist wings for non-offending reasons. Where a prisoner is referred to services under a rehabilitative activity condition, they should be seen/placed on the waiting list according to the urgency of their need.

6.152 A not guilty plea does not mean the prisoner cannot be offered a rehabilitative activity condition, if throughout the course of the hearing they change their plea and admit responsibility and recognise the need for, and value of, support. The initial not guilty plea may factor into the governor's decision, but it may still be a viable option.

Rehabilitative activity compact

6.153 If a prisoner agrees to engage with a rehabilitative activity condition, they must sign a rehabilitative activity compact (see Annex A) to demonstrate that they understand what they are required to do and the consequences of not meeting that. This should also be signed by the wing manager and/or the staff running the activities. At a minimum, the compact must include:

- the intended aims and purpose of the activities;

- full details of the activities;
- what behavioural or support need the activities intend to meet;
- the duration of the suspension period;
- the level of engagement required; and
- who they will be engaging with/who will be responsible for monitoring their progress. This must be a member of staff in a position to judge whether the prisoner has met the required standards.

Breach of a condition

6.154 Adequate compliance with, or completion of, rehabilitative activity conditions should result in the suspended punishment lapsing, and no further action is required. It would be good practice to reinforce the prisoner's positive engagement through acknowledgement and encouragement to continue to make use of the support, including making a positive record on the relevant DPS adjudication record. Examples of positive behaviour reinforcement can be found at paragraph 7.1 of the Incentives Policy Framework.

6.155 If a prisoner breaches either a non-offending or rehabilitative activity condition attached to their suspended punishment during the period of suspension, the adjudicator should seek to understand why and may then choose between the following options (see further guidance on breach of rehabilitative activity conditions in paragraph 6.157):

- Activate the suspended punishment in full.
- Activate part of the suspended punishment. The remaining part will then lapse.
- Extend the period of suspension by up to a further six months.
- Do nothing about the suspended punishment.

6.156 In addition to the above options, where the prisoner has failed to adequately comply with a rehabilitative activity condition (either through non-attendance or poor levels of engagement), the governor may choose to either allow the prisoner to continue to engage with the rehabilitative activities or withdraw the prisoner from the activities. Where there is a realistic prospect of rehabilitation through continued engagement, but punishment is deemed necessary, this can be achieved through the activation of the suspended punishment, in part or in full, alongside allowing the rehabilitative activities to continue. Once the suspended punishment has been activated in full or in part, the prisoner's engagement with the rehabilitative activities would no longer be mandatory and so no further action may be taken if they ultimately choose not to engage following activation of the punishment. Any action taken on the suspended punishment and decisions made about whether the rehabilitative activity can continue must be recorded on the DPS record of the adjudication.

6.157 This decision must be made by a governor in the presence of the prisoner to allow the prisoner to make representations. This does not require a further adjudication hearing to take place but may adopt a similar format. When considering what action to take following a breach of a rehabilitative activity condition, the governor should refer to the compact the prisoner signed and consider the following factors, and any others they deem relevant:

- The prisoner's overall attitude and engagement with the rehabilitative activities.
- The number of sessions completed as a proportion of the number of sessions they have been instructed to attend so far. A prisoner should not be punished if it is through

no fault of their own that they have not completed the expected number of sessions to date.

- Whether any sessions they have completed or engaged with appear to be having the intended effect on the prisoner's behaviour, and, where relevant, whether the steps they have taken are moving them forward in their substance use dependency recovery journey, recognising that each prisoner's recovery journey will differ and that it is not a linear process. They may experience a recurrence of substance use dependency symptoms despite their motivation to engage.
- Any evidence of circumstances or personal characteristics which may have impeded the prisoner's engagement with the rehabilitative activity condition, and whether any required reasonable adjustments were properly put in place.
- Any strong personal mitigation from the prisoner.
- Any representations from the staff overseeing or running the activity, regarding prisoner attendance and engagement with the activity.
- Whether continued engagement with the rehabilitative activity condition is likely to support or encourage rehabilitation or whether their level of engagement to date indicates a lack of willingness or interest in rehabilitation.
- Whether activating the suspended punishment would discourage the prisoner from engaging with the rehabilitative activity condition (if allowed to continue).

6.158 Whatever action may be taken about the suspended punishment does not affect any other punishment the adjudicator may impose for the current offence if a non-offending condition is breached.

6.159 Punishments imposed at the same time for separate offences may be concurrent (i.e., served at the same time as each other), or consecutive (one starting as another ends). Concurrent punishments are usually preferable if the offences formed part of the same incident. If consecutive punishments are imposed the total punishment should not be excessive for the offences taken as a whole. Please see Section 7 for a list of individual punishments.

Additional days

6.160 Additional days (i.e., further time to be spent in custody) may only be imposed by IAs, who are District Judges (magistrates) approved by the Lord Chancellor. Under PR 55A (1) (b)/YOI R 60A (1) (b) additional days may only be imposed on a "fixed term" prisoner, as defined in PR 2 and YOI R 2 and the Criminal Justice Act (CJA) 2003. In effect this means that additional days may only be imposed on prisoners who are serving determinate (i.e., time limited) sentences, but not on prisoners serving indeterminate (i.e., not time limited) sentences.

6.161 Prisoners who are not eligible to be punished with additional days include those serving life sentences (as well as detention at His Majesty's pleasure, custody for life, etc), those Imprisoned or Detained for Public Protection (IPP), those subject to Detention and Training Orders (DTO), and foreign nationals who have completed a determinate sentence and are now held solely under immigration powers (although they may receive other punishments while held subject to Prison or YOI Rules). Those committed to imprisonment for example for default on fines and confiscation orders and contemnors were eligible for additional days under provisions in the CJA 1991 but they are not eligible for additional days under the provisions of the CJA 2003.

6.162 Additional days can be awarded to prisoners who are serving a sentence following recall from licence, but they cannot always be actioned for sentence calculation purposes. Chapter 12 of Annex A to The Sentence Calculation Policy Framework provides information about how such additional days interact with a sentence on which a recall has been issued and any subsequent sentence that may have been imposed.

6.163 IAs may impose any of the punishments that governors may impose, and up to 42 additional days on both adult prisoners and children. If a prisoner is found guilty of more than one offence arising from a single incident the IA may impose consecutive punishments of additional days, but the total must not exceed 42 days (PR 55A/YOI R 60A). A punishment of additional days may not extend the period in custody beyond a prisoner's Sentence Expiry Date (SED).

6.164 If a prisoner was previously given a punishment of suspended additional days, and commits a further offence during the period of suspension, the governor may either take no action on the added days and proceed to deal with the case, or may refer the charge to an IA to inquire into it and decide whether to activate the suspended days, if the charge is proved. Only IAs may activate suspended additional days. The time limit for an IA to open a hearing when a case is referred under this paragraph is 28 days, the same as for other referrals.

6.165 Further to paragraph 4.76 regarding the Discretionary Friday/pre Bank Holiday Release Scheme, in cases where the added days bring the prisoner into scope for this scheme, for example, where the person leaving prison would have been released on a Thursday, but the added days mean the new CRD/ARD/NPD/end of the FTR falls on a Friday or the day before a bank/public holiday (or a weekend or bank/public holiday, so that the day of release is automatically moved to the preceding working day) and they fall in scope of the scheme, discretion can be applied where releasing earlier (i.e., on the Wednesday) or reverting to the Friday would reduce the risk of reoffending through improved resettlement. For further information, please see the Discretionary Friday/pre-Bank Holiday Release Scheme Policy Framework.

6.166 When prisoners are given the DIS7 form at the end of the hearing, governors will need to ensure that all prisoners are aware of the remission of added days procedure and have access to the application form DIS9, for example where prisoners have access to Launchpad, ensuring that the DIS2 is available which explains the remission process. Additional support should be provided to children and prisoners with language and learning difficulties who may struggle to understand the system. Further information on the remission of added days is available at paragraphs 6.228–6.238.

Unconvicted prisoners and prospective added days

6.167 If a prisoner is found guilty of a disciplinary offence while on remand the IA may impose a punishment of prospective additional days, which will become substantive if the prisoner subsequently receives a determinate sentence, or else lapse if they receive an indeterminate sentence or are found not guilty of the charge for which they were remanded. Prospective additional days may be suspended, and later activated, or remitted, mitigated, or quashed, in the same way as substantive additional days. In the case of a dual sentence, where a prisoner is serving a period of remand and a sentence at the same time, any added days awarded during this dual period can only be immediate or suspended. The punishment of additional days should be applied to the prisoner as a fixed-term prisoner, and not a prisoner on remand.

Unconvicted prisoners and suspended sentences

6.168 Where a person breaches a suspended sentence and the court activate the sentence in full or in part, the remand time relevant to the offence for which the original suspended sentence was imposed will count as time served towards the term that has been activated. Therefore, any prospective additional days that were awarded during that period of remand will also apply to the activated sentence. Chapter 7 of Annex A to the Sentence Calculation Policy Framework explains about relevant remand and Chapter 12 of Annex A of that Framework explains how prospective additional days are linked to the remand period for application purposes.

6.169 Substantive additional days (unless remitted, mitigated, or quashed – see paragraphs 6.211-6.215) will be taken into account when calculating the prisoner's release date.

Payback punishment

Prisoner eligibility

6.170 Thorough consideration must be given to the prisoner's personal circumstances before offering payback punishment and when deciding on the appropriate projects. This includes considering mental and physical wellbeing; their safety and that of others in the prison; neurodiversity and any associated reasonable adjustments; protected characteristics; and any other factors of note to the governor. Adjudicating governors may seek advice from the prisoner's Prison Offender Manager on what activities could support a prisoner's sentence plan and any personal circumstances that they might be aware of.

6.171 The governor should consider how the prisoner's age might impact on the decision to offer payback punishment and the nature and duration of the project(s) given. Adjudicating governors should ensure that any age-related mental or physical health concerns are taken into consideration when determining the appropriateness of payback punishment and the duration and physical requirements of the project, including whether to put in place any reasonable adjustments to assist prisoner participation. Any work exemptions on medical grounds must also be considered.

6.172 Adjudicating governors should be aware that not all disabilities are visible and consider the prisoner's representations and their conduct report when making the assessment of whether payback punishment is appropriate. It may be that the prison cannot run a project that can accommodate the prisoner's needs, in which case alternative punishments should be considered.

6.173 Where payback punishment is being considered for prisoners who are pregnant or on the perinatal pathway, governors should consider whether a reasonable adjustment, reduced hours, or less physically demanding tasks are appropriate. Women living on Mother and Baby Units should be able to access the regime and activities of the prison, but the appropriate flexibility should be given to allow them to balance these commitments with the needs of the child. Adjudicating governors should consider whether the prisoner is on a period of maternity leave from regime activities, as well as any recommendations from their care plan, including the prison medical professionals' assessment of their physical and mental readiness to engage in activities. There may be circumstances where the prison cannot provide a payback punishment project that can accommodate the prisoner's needs, in which case alternative punishments should be considered.

Offences appropriate for payback punishment

6.174 Payback punishment is available for all offences heard by a governor, but it must be relevant to the charge. For example, where a prisoner's actions have had a detrimental effect on the community, such as causing a noise disturbance or delaying the regime by not following a lawful order, the payback punishment project(s) could involve giving back to the prison community. It could also be appropriate if there is a natural consequence to their actions e.g., where a prisoner has damaged something, they can improve the environment of the wing such as by organising notice boards.

6.175 There is an expectation that payback punishment projects should not take away paid employment from other prisoners. Adjudicating governors must balance the benefits of the payback punishment to the individual and the community with fairness towards compliant prisoners and should determine the appropriateness of payback punishment projects based on the needs of the individuals within their prison.

Setting payback punishment projects

6.176 Projects imposed under the payback punishment should, as far as practicable, encourage responsibility and the prisoner's interests and skills, to help them prepare for their return to community.

6.177 Prisons should establish a local catalogue of payback punishment projects and regularly review whether the options offered are appropriate and applied fairly. Prisons are encouraged to innovate and use the facilities and resources available at their establishment, to find suitable payback punishment projects, consulting with the Activities Hub, partners, staff, and prisoners. It is important that the Area Property Operations Manager and Facilities Management Supplier are consulted to ensure that project options do not contravene the Facilities Management contract or invalidate warranties or insurance. Particular regard needs to be given to whether there is potential for a prisoner to complete work to a poor standard which would require additional resource for facilities management to then fix. Adjudicating governors may opt for a project outside of the local catalogue if they identify an alternative appropriate opportunity, but they must first ensure that it does not interfere with the local facilities management contract. Once projects have been decided on, or as a new project is introduced, prisons will need to create activities on the DPS activities service to include the projects on their 'foundational activities' list. This will ensure no payment is assigned and prisoners can be allocated to these projects and unlocked to attend.

6.178 Prisons should use local risk assessment procedures to consider whether an assessment is required for each payback punishment project given.

6.179 Payback punishment may include, but is not limited to:

- repairing items (excluding building services such as plumbing, or fabrics of the building such as wall plaster);
- improving physical aspects of the prison environment through rearranging and clearing community or disused spaces;
- short-term projects to improve the grounds such as litter picking; and
- maintaining prisoner notice boards or completing artwork for display around the prison.

Assigning payback punishment

6.180 As arrangements will need to be made prior to the commencement of the payback punishment, the punishment will take effect, but will not necessarily start, immediately following the adjudication hearing. However, prisoners should be able to access the payback punishment within a reasonable timeframe following the hearing. This can be determined locally; however, it should not be longer than a four-week period. To enable this, governors should factor in the availability of spaces and any waiting lists for payback punishment projects when offering it to prisoners. If for any reason it would not be possible to arrange for the payback punishment to begin within four weeks of the hearing in which it was assigned, governors will have the discretion to extend this period, or consider alternative punishments instead.

6.181 To fully engage prisoners in the process, and encourage their motivation, it is advised that they are included in the discussion about what the project(s) will be, including being given the opportunity to provide suggestions. Prisons have discretion to develop processes that enable the governor to offer payback punishment as a consequence of the adjudication. This can either be during the hearing or afterwards, provided the prisoner is told the type and duration of the payback punishment project(s), and the time within which they must be completed, in the hearing.

6.182 One option could be to have a live record of spaces and waiting lists for the projects in their local catalogue so the governor can choose the appropriate project(s) in the hearing. Alternatively, a multidisciplinary approach may be taken where the governor adjourns to consult with the Activities Hub, facilitators, and relevant staff such as the prisoner's keyworker (where applicable) and their Prison Offender Manager, to determine the exact details of the project(s). The level of consultation required with the Prison Offender Manager may depend on whether the prisoner is currently at a stage of their sentence which requires more regular supervision, but in any event, the Prison Offender Manager must be informed of the outcome. The DPS record of the adjudication must be updated with details of the project(s), including the type of project, the length of the punishment (i.e., number of sessions); when the punishment must be completed by; and the named member of staff responsible for monitoring the prisoner's progress.

6.183 A governor must sign off the final payback punishment project(s). The arrangements of the project(s) must be clearly explained in person, and the project(s) detailed in the payback punishment compact for the prisoner to sign (see Annex A). The prison may decide who is best placed to inform the prisoner and the adjudication is not required to be reconvened, however prisons may wish to do this via the adjudication setting.

6.184 Consideration of the prisoner's risk must form part of the governor's decision to offer payback punishment. Adjudicating governors should seek advice from the prisoner's Prison Offender Manager to understand their risk of harm to themselves or others and any other relevant risk factors.

6.185 The governor should consider whether the prisoner has been offered payback punishment before; whether they opted to engage; and how well they engaged with it. This may have an impact on the decision to offer payback punishment for the current charge. These factors should be taken into account, but the decision should largely be based on the current circumstances and the prisoner's current levels of motivation to engage. Prior refusal to engage, or lack of adequate engagement do not necessarily indicate that the prisoner will refuse or fail to engage again.

6.186 A not guilty plea does not necessarily mean a prisoner cannot be offered payback punishment if throughout the course of the hearing they change their plea and admit responsibility and recognise the need for, and value of, support. The initial not guilty plea may factor into the governor's decision, but it may still be a viable option.

Payback punishment compact

6.187 If the prisoner agrees to engage with payback punishment, they must sign a payback punishment compact to demonstrate that they understand what they are required to do and the consequences of not meeting that. This should also be signed by the wing manager and/or the member of staff responsible for monitoring the prisoner's progress. At a minimum, the compact must include:

- The intended aims and purpose of the project(s);
- The full details of the project(s);
- What behavioural or support need the punishment intends to meet;
- The duration of the punishment and the time within which it must be completed;
- That the prisoner will have failed to comply and be charged as such, if they do not attend the required sessions, or their behaviour is so disruptive that they are removed from the session; and
- Who will be responsible for overseeing their progress. This must be a member of staff in a position to judge whether the prisoner has met the requirements.

Compliance with payback punishment

6.188 If a prisoner ultimately fails to complete, or comply with their payback punishment, they can be charged with PR 51(23A)/YOI R 55(26A) ('fails to comply with any payback punishment'). Before laying a charge, staff should first consider giving the prisoner a warning. Adequate compliance or completion of the payback punishment will require no further action; however, good practice would be to acknowledge the prisoner's positive engagement to reinforce the positive behaviour, including making a positive entry on the relevant DPS adjudication record. Examples of positive behaviour reinforcement can be found at paragraph 7.1 of the Incentives Policy Framework. For more information on what constitutes adequate compliance, see paragraphs 7.141–7.143 for charging considerations.

Interrupted or delayed punishments

6.189 A period spent in hospital or prison healthcare will count as part of a punishment period, even if the punishment is not applicable in that location (e.g., loss of privileges may not be enforceable if access to TV is available in the hospital). Attendance at court or organised work will also count towards the punishment period. If a punishment is interrupted while the prisoner is on bail or unlawfully at large, the balance of the punishment, other than CC, should be served when the prisoner returns to custody in connection with the same legal proceedings. If a period of CC is interrupted the remainder of it will lapse. If a punishment is delayed or interrupted for other reasons the adjudicator should assess whether to enforce it (e.g., if the prisoner has become too ill to undergo the punishment, or there is an excessive delay in being able to place the prisoner on payback punishment or a rehabilitative activity, etc). If a prisoner is released part-way through a disciplinary punishment, the punishment lapses and cannot be restarted if the prisoner later returns to custody on new criminal charges (including cases where a prisoner's current sentence ends but they remain in custody on

remand for other offences. Technically the prisoner has been released from the current sentence).

Minor Reports

6.190 In establishments holding children and adults under 21 the Governor may choose to operate a minor reports system. Minor reports are a form of adjudication used to deal with lesser offences, in those establishments where the Governor has decided to operate the procedure. The standard of proof is the same as for other adjudications, beyond reasonable doubt.

6.191 Minor reports may be conducted by Supervising Officers/operational band 4 (or the equivalent in contracted prisons) who have delegated authority from the Governor, and who have passed the relevant training course.

6.192 A charge may be heard as a minor report (where the system operates), or as a normal adjudication. But once a case has begun as a minor report it may not be changed or reheard as a normal adjudication.

6.193 Remand prisoners aged under 21 (unconvicted or unsentenced) held in local prisons or remand centres may be charged with minor report offences under the Prison Rules as follows. Children and adults, in YOIs or a part of a prison designated as a YOI, may be charged with minor report offences under the YOI Rules as follows. (See below for full wording of each Rule):

- PR 51 (5) and YOI R 55 (6) intentionally or recklessly endangers health and safety.
- PR 51 (6) and YOI R 55 (7) intentionally obstructs an officer etc.
- PR 51 (17) and YOI R 55 (18) destroys or damages part of a prison/YOI or property (PR 51 (17a) and YOI R 55 (19) protected characteristic version of the offence is not included).
- PR 51 (18) and YOI R 55 (20) absents himself etc or is present etc.
- PR 51 (19) and YOI R 55 (21) disrespectful to an officer etc.
- PR 51 (20) and YOI R 55 (22) threatening abusive insulting words or behaviour (PR 51 (20A) and YOI R 55 (23) the protected characteristic version of the offence is not included).
- PR 51 (21) and YOI R 55 (24) intentionally fails to work properly, or refuses to work.
- PR 51 (22) and YOI R 55 (25) disobeys any lawful order.
- PR 51 (23) and YOI R 55 (26) disobeys any rule or regulation.
- PR 51 (25) and YOI R 55 (29) attempts, incites or assists (only in relation to offences in this section, i.e., other minor report offences).

6.194 The following procedure is to be followed when conducting a minor report*:*

- The reporting officer completes the minor report sheet in the Minor Report Book.
- The wing manager confirms that a charge has been laid under the correct paragraph.
- The prisoner is given the notice of report in sufficient time to prepare a defence. This need not be two hours (as with other adjudications), but the adjudicator (Supervising Officer/Band 4) must be satisfied that the prisoner has had enough time.

- The wing manager notifies the relevant officer that a minor report is due for hearing.

6.195 Prisoners awaiting a minor report hearing are not to be segregated prior to the hearing (since they are only charged with a lesser offence – if segregation is thought necessary, it is unlikely that the minor report procedure will be appropriate).

6.196 If the officer hearing the minor report decides that medical advice is needed the hearing will need to be adjourned, and Healthcare contacted. Particular care will need to be taken where there are any concerns about the prisoner's mental health.

6.197 The punishments that may be imposed for a proven minor report charge are:

- A caution
- Forfeiture of specified privileges for a maximum of three days
- Stoppage of earnings for a maximum of three days
- Extra work outside the normal working week for a maximum of three days, for not more than two hours on any day (only for those charged under YOI Rules)

6.198 As with other adjudications, these punishments start immediately, and may be reviewed in the same way. A record of the hearing is to be kept in the Minor Report Book (MRB), and the outcome noted in the prisoner's record. The Governor or Deputy Governor will examine and initial the MRB each week and chair a review meeting of those authorised to hear minor reports at least every three months. These meetings will review diversity issues and ethnic breakdown data in relation to minor reports, to ensure that no prisoner has been charged or punished for reasons other than their behaviour.

After an adjudication

Post hearing procedures

6.199 The governor will ensure that any necessary action following the punishment(s) is taken, in relation to calculation of the prisoner's earnings, forfeiture of privileges, recalculation of release date, cell sharing risk assessment review, arrangements for payback punishment or rehabilitative activity conditions, CSIP referral etc, and that this is appropriately recorded (see paragraphs 4.75, 6.17 and 6.137).

6.200 If an adjudication is quashed on appeal, dismissed, or 'not proceeded with', and the prisoner was downgraded to basic incentive level for the incident that led to the adjudication, then an incentives review should take place at the earliest opportunity in line with the Incentives Policy Framework. There is an expectation that the wing staff will be provided with the reason for this decision to aid the review. If an adjudication is dismissed, and it was an isolated incident it could be perceived as unfair to keep the prisoner on basic when they have not been proven guilty so there is a presumption that the prisoner will be returned to their original incentives level. Where an adjudication is 'not proceeded with' due to procedural issues, and where a prisoner had been moved down an incentives level in relation to the alleged incident, an incentives review should take place to determine the prisoner's appropriate incentives level.

Reviews/Appeals

Flawed cases

6.201 If a prisoner or member of staff believes an adjudication or minor report was flawed because it was illegal, unfair, or incorrect procedures were followed, they may draw this to the attention

of the Governor. If the Governor agrees that the adjudication was significantly flawed the punishment may be remitted or the finding set aside, where the adjudication was conducted by a Governor (PR 61 (2)/YOI R 64 (2)). If it was conducted by an IA the prisoner should be advised to forward a request for a review of the punishment to the Senior District Judge, as in paragraphs 6.211-6.212. The Prison and YOI Rules do not provide any other avenue for reviewing IA cases.

Termination of punishment

6.202 A Governor may terminate or mitigate any partly served punishment other than additional days either on medical advice, or where it appears that the punishment has had the desired effect, and the prisoner is unlikely to repeat the offence.

Review of adjudications heard by governors – HMPPS Prisoner Casework Section

6.203 If a prisoner requests an adjudication conducted by a governor, or a minor report, to be formally reviewed, they, or a legal adviser, should complete form DIS8 within six weeks of the end of the hearing, and forward it to the Governor. If the prisoner is currently serving a punishment of CC the establishment will "fast-track" the request as soon as the prisoner submits their appeal by scanning and e-mailing it to the Prisoner Casework functional mailbox: prisonercasework@justice.gov.uk. The e-mail should be marked 'Urgent', and the correctly formatted documentation should be attached (listed at Annex A), any mitigation statement and any witness statements or other evidence considered at the hearing. If the prisoner is not currently serving CC the papers should still be scanned and emailed to the functional mailbox on immediate receipt of the prisoner's appeal as documentation can only be received electronically. Where there is a delay in submitting the appeal, the reasons should be explained.

6.204 If the adjudication paperwork is not retained by the prison, Prisoner Casework will be unable to review the adjudication (see paragraph 6.245 for information on retention of records). If any of the documentation is not submitted with the original request (or is not correctly formatted), Prisoner Casework will issue one reminder to the establishment. If it is still not submitted (or correctly formatted) Prisoner Casework will recommend to the relevant PGD that the prisoner's appeal is upheld (i.e., that the guilty finding is quashed).

6.205 On receipt of all documentation, Prisoner Casework will consider the review request. It is not the role of Prisoner Casework to re-hear the adjudication, but to review the paperwork to ensure that there were no fatal flaws in the adjudication procedures. If the appeal is not upheld, Prisoner Casework will respond directly to the establishment to that effect. If Prisoner Casework consider that the appeal should be upheld (i.e., the finding should be quashed or the punishment mitigated), they will submit the relevant documents and recommendation to the PGD, who will make a decision and notify Prisoner Casework of the outcome of the appeal. The PGD can delegate this responsibility to a Band 9 or above (or an operational manager at Band 8 or above), who reports to the PGD and has sufficient experience, knowledge, and training to ensure fair, rational, and consistent decision making, on ordinary public law principles. Prisoner Casework will then inform the establishment of the outcome of an appeal within 20 working days of receiving the request and for fast-track appeals, within 48 hours of receipt of the request.

6.206 If a punishment of CC is quashed or replaced by a different punishment it is for the Governor to ensure that the prisoner is returned to normal location immediately. If CC is to continue but the number of days is reduced the new end date will be put into effect so that the prisoner does not serve longer in CC than the amended punishment allows. If a punishment of stoppage of earnings is quashed or mitigated the Governor will ensure that the loss of money

is recalculated in line with the amended punishment, and any money now owed to the prisoner is paid. No other compensation is available for quashed or mitigated punishments.

6.207 If a prisoner writes to an MP or special interest group, who then takes up the case, it will be reviewed by Prisoner Casework in the same way as if the prisoner had submitted a DIS8.

Disclosure of adjudication papers (after conclusion of hearing)

6.208 A copy of all adjudication paperwork, including witness statements requested by a prisoner or their legal representative/adviser for an appeal, should be provided without delay at no cost (except where any disclosure would put someone at serious risk of harm, compromises national or prison security or where a medical report or intelligence could identify someone other than the patient who has provided information, see all considerations at paragraph 6.43-6.45). In cases where urgent action is required, consideration should be given to scanning and emailing the paperwork direct to the prisoner's representative or legal adviser.

Prisons and Probation Ombudsman - Independent Prisoner Complaint Investigations team

6.209 A prisoner who is not satisfied with the outcome of the review may ask the Independent Prisoner Complaint Investigations team at the Prisons and Probation Ombudsman to look into the case. The Independent Prisoner Complaints Investigation team may make a recommendation to HMPPS, which although not binding will usually be accepted.

6.210 Any prisoner still not satisfied may apply for a judicial review – see paragraphs 6.223-6.224.

Review of independent adjudications – Chief Magistrate's Office

6.211 Prisoners or their legal adviser/representatives requesting a review of an adjudication conducted by an IA should set out their reasons on form IA4 (not DIS8) or in a letter, and forward it to the Governor within 14 days of the end of the hearing or of the imposition of the compensation requirement, whichever is later - Prison Rule 55B (2) and YOI Rule 60 B (2). The Governor will then forward all the adjudication papers (as for governor cases above) to GL-Ind.Adjudication@justice.gov.uk.

6.212 If the prisoner is serving a punishment of CC, or has been given additional days close to their release date, the papers should be "fast-tracked", i.e. dealt with as a priority and scanned to GL-Ind.Adjudication@justice.gov.uk.

6.213 The Senior District Judge delegates review requests to a Nominated District Judge (NDJ), who considers them and writes to the prisoner and Governor, with a copy being sent to the solicitor if they wrote on their behalf, to inform them of the outcome within 14 days of receiving the request. The NDJ may quash or mitigate a punishment, but has no power under the Prison or YOI Rules to quash a finding of guilt by an IA.

6.214 There is no provision in the Prison or YOI Rules for anyone other than the accused prisoner or their legal adviser to contest an IA's findings, or the punishment imposed. If a member of staff is dissatisfied with the outcome of an adjudication their only outlet is to put their views to the Governor, for them to consider whether to raise the issue with the adjudicator or, through the Senior District Judge, with the IA.

6.215 The Independent Prisoner Complaints Investigation team's remit does not extend to judicial decisions, including those of IAs (District Judges), so if a prisoner is not satisfied with the outcome of the NDJ's review the only avenue open is to apply for a judicial review – i.e., to ask a court to look into the case and rule whether proper legal procedures were followed etc.

Appeals in relation to damages compensation payments

6.216 The actual decision to impose a compensation order for damage to prisons and prison property cannot be appealed against. However, if a prisoner wishes the adjudication conducted by the governor to be reviewed on the grounds that it was flawed or wishes to appeal the amount of compensation imposed, then they should follow the procedures outlined in paragraphs 6.201 and 6.203. This review would include the actual amount imposed which can be mitigated down to zero where appropriate, but would not include the minimum to be left in the prisoner's account (see paragraph 4.80 for details on this). The same can be applied to those cases dealt with by an IA, which would be reviewed by the Senior District Judge, and details of this can again be found in at paragraphs 6.211-6.212.

6.217 If the amount of the compensation imposed is reduced, any overpayment must be reimbursed to the prisoner by the prison where the prisoner is located (or last located if the prisoner has been released).

Governor's Decisions on Recovery of damages compensation payments

6.218 It is open to prisoners to question the minimum amount that is to be left in their Accounts but this will be via the prisoner complaints process and dealt with/ answered locally. As decisions on the minimum amount are taken by Governors and are not part of the adjudication process, an appeal against it must not be treated as a reserved subject.

Priority of Payment in relation to damages compensation payments

Court Orders

6.219 If a Court has imposed an Order against a prisoner to pay monies (such as a confiscation order) then that takes precedent over the recovery of monies for damage to property (or recovery of an advance – see paragraph 6.221). If the prisoner has sufficient monies left in their accounts after complying with instalments imposed under the Court Order, then the prison will be able to take the money provided the safeguards identified in paragraphs 6.123-6.125 are in place. If the prisoner refuses to comply with the Court Order and no enforcement action has been taken by the Court then the prison can take payments from the prisoner's accounts for any damage caused.

6.220 If the recovery of monies for damage is underway and a subsequent Court Order is imposed by the Court, this Order takes precedent and recovery will be suspended whilst the issues raised in paragraph 6.219 are considered.

Advances and other Scheduled Payments

6.221 Any further obligations, such as advance repayments and TV charges will be deducted after the damage obligation scheduled payment has run on Prison-NOMIS. Recovery of advances and TV payments should not impact on decisions about the minimum amount to be left in the prisoner's accounts and prisoners will be liable to pay back these charges from within the minimum set.

Replacement of Items

6.222 For non-essential items, such as televisions, subject to safety, equalities, and safeguarding considerations, it is possible to withhold the replacement of any damaged item until the amount owing under an adjudication compensation award in relation to that damage has been recovered from the prisoner. This may pose operational difficulties particularly in shared cells, and Governors need to ensure that they are not penalising any innocent party by withholding items, such as televisions. Essential items, such as cell fixtures, need to be

replaced as soon as operationally possible and regardless of whether the prisoner has paid for the damage.

Judicial review

6.223 Adjudication Judicial Reviews (JRs) are handled by HMPPS litigation teams, who liaise with the operational line, policy advisors and the Government Legal Department (GLD)/legal counsel to respond to the challenge (via the challengers' legal representative and the court). The exception to this is where the JR challenge is to the policy itself. Where this occurs, the policy team will lead.

6.224 Where required, Governors should provide the HMPPS Legal Teams with copies of adjudication papers and witness statements. General guidance on JRs can be found on the MoJ's Intranet under Legal Services, or on the MoJ website, or by speaking with one of the HMPPS litigation teams.

6.225 JRs are generally based on one or more of the following grounds:

- Ultra vires – the adjudicator acted outside the powers given to them by the Prison/YOI Rules.
- Breach of the rules of natural justice – the adjudication was unfair because the adjudicator was biased, or the accused prisoner did not have an opportunity to present a case ('audi alteram partem' – hear the other side).
- Legitimate expectation – the adjudication was not conducted in the way, or the prisoner was not treated, as the prisoner was entitled to expect.
- Inadequate reasons – the adjudicator did not give proper reasons for the decision(s).
- Fettering discretion – the adjudicator did not exercise discretion fairly, or did not have an open mind about the circumstances of the case.
- Unreasonableness – the adjudicator's decision was irrational - no authority properly directing itself on the law and acting reasonably could have reached such a decision (e.g., relevant issues were ignored or irrelevant ones given weight, the wrong test was applied in reaching a finding, or a punishment was indefensibly severe).
- Breach of a right under the European Convention on Human Rights – usually Article 6 (right to a fair trial) – mostly raised in IA cases.

6.226 Adjudicators can make a JR less likely to succeed if they always ensure that a full record of the hearing is noted on the DIS3, with clear, legible, and adequate reasons for all significant decisions, especially in relation to the calling of witnesses, granting or refusing legal representation (governor cases), reasons for granting or refusing adjournments, finding guilt beyond reasonable doubt, and appropriate punishments. This also applies to complaints made to the Independent Prisoner Complaints Investigation team at the Prison and Probation Ombudsman.

6.227 JRs can take many months to reach a conclusion, as the case progresses through the courts, in some cases even as far as the Supreme Court. When a final decision is reached the prisoner and their legal representatives will be informed. If the prisoner is successful the court may order the adjudication to be quashed.

Remission of additional days

6.228 A prisoner who has not had a further finding of guilt at an adjudication for six months (four months for children and prisoners who were young offenders at time of offence) since the date of the offence (not the date of the adjudication) for which additional days were imposed may apply for some of the days to be remitted on the grounds of good behaviour. Up to 2006 the six/four months period related to further findings of guilt for which more additional days were the punishment; since January 2006 the period has related to any punishment imposed at an adjudication since the additional days. If the offence occurred between two dates (such as MDT cases) the earlier date should be taken as the date of the offence.

6.229 A prisoner/young offender may make a further application for remission of additional days (previously known as restoration) six (four months for children and prisoners who were young offenders at the time of offence) after the date a previous application was submitted, if there have been no further findings of guilt in that period, and if less than the normal maximum of 50% of the days were remitted on the previous occasion.

6.230 The six/four months period may be made up of time spent in a prison or YOI, special hospital (if transferred there from a prison or YOI), community home, youth centre, police custody under Operation Safeguard or while assisting police enquiries, or while released on temporary licence under PR 9/YOI R 5. Time spent unlawfully at large does not count (in any case a prisoner who was unlawfully at large during the six/four months period is likely to have a finding of guilt for escape or ROTL failure, or a conviction). A prisoner transferred on restricted terms from a prison in England or Wales to a prison in Scotland (where additional days are not imposed) may apply six or four months after their last adjudication for additional days imposed prior to the transfer to be remitted. The Governor of the English or Welsh prison should obtain reports on the prisoner from the Scottish prison and consider the application in the normal way.

6.231 Additional days are taken into account when release dates are calculated, so have been served before release. A prisoner who is released on licence and subsequently recalled to custody is therefore not eligible for remission of any additional days incurred before release. Additional days imposed after recall may be remitted in the normal way.

6.232 As the remission of additional days is an administrative rather than a judicial task, decisions are made by governors, who are familiar with the prisoner, rather than IAs (using authority given to the Governor under PR 61 (2)/YOI R 64 (2)).

6.233 When an application is received it will need to be logged and then forwarded to wing staff, to complete sections 2-6 of form DIS9 giving details of the offence that resulted in additional days, previous applications for remission, and the prisoner's behaviour, including any further findings of guilt. The wing officer will need to consult other staff who have knowledge of the prisoner. If the prisoner spent half or more of the six/four months period before the application in another establishment a similar report will need to be requested from that establishment. It is not necessary to seek the views of the IA who imposed the additional days.

6.234 The report will normally be disclosed to the prisoner (other than any security-sensitive information), and will need to be accurate and unbiased, if not entirely objective. It will record any positive evidence of the prisoner's constructive attitude and seeking opportunities for work, education and other regime activities, and response to any release on licence. Any negative comments will also need to be supported by evidence. The report will only relate to the prisoner's behaviour since being in custody and will not refer to previous criminal history.

6.235 The Governor will consider the application as soon as possible and within one month of its submission, taking account of factors up to the time of consideration. If the prisoner wishes to make oral representations in support of the application or to comment on the wing report this should be allowed, and the author of the report should attend (if practicable) to respond to the prisoner's questions or comments, or to amplify the report.

6.236 Applications from prisoners currently in hospital will need to be considered when they return to prison, or occasionally through correspondence or by visiting the hospital.

6.237 Factors the Governor will need to take into account when considering applications include:

- Has the prisoner taken a constructive approach towards imprisonment, e.g., sought and made the most of opportunities for work, education, physical education, and other regime activities? Has the prisoner repaid the trust received when e.g., granted temporary release on licence? Has the prisoner engaged with rehabilitative and resettlement activity?
- Has the prisoner shown a genuine change of attitude, whether or not this has been demonstrated through participation in regime activities? Avoiding trouble does not necessarily prove such a change, although for some prisoners this would be a significant achievement.
- In view of the nature of the original offence for which additional days were given, does the prisoner's constructive approach and significant change of attitude deserve to be rewarded by remission of additional days, and if so, by how many days? Remission is normally limited to a maximum of 50% of additional days, whether remitted on one or more occasions, so where the original punishment is an uneven number of added days, establishments would round down the number of days remitted if a 50% reduction is being granted. However, in very exceptional circumstances governors may remit more than 50%, up to 100% of the days (that is, additional days imposed before 2 October 2000 or since 7 October 2002 – days imposed between those dates were all remitted in 2002).
- Is the Prison Offender Manager or Community Offender Manager aware of the remission application? Any release plans should be considered in addition to recent behaviour.

6.238 Any remitted days are to be logged, and the prisoner's release date recalculated. Prisoners may be informed orally immediately of the Governor's decision, and in all cases will be given a written decision, with reasons, in sections 7-8 of form DIS9 within seven days of the consideration. The form will show the prisoner's recalculated release date and, if applicable, when they will next be eligible to apply for further remission (i.e., six/four months from the date of the latest application).

6.239 If the recalculated release date falls on a Friday, or day before bank/public holiday (or it falls on a weekend or bank/public holiday, so that recalculated release date is automatically moved to the preceding working day), the release date of eligible prisoners will be brought forward by 1 day (unless 2 days have been agreed or it is more appropriate to defer release to the Friday) using the NOMIS release schedule at the sentence calculation 14 day check prior to release. For further guidance, please see the Discretionary Friday/pre-Bank Holiday Release Scheme Policy Framework.

Management oversight and equalities guidance

6.240 Governors are required to regularly review the timeliness, conduct, and governance of adjudications, within their establishments to ensure that the outcomes are being achieved, and that the requirements in this Policy Framework are being followed. This includes considering the quality of paperwork which supports the entire adjudication process.

6.241 Governors must ensure their adjudications are fair, lawful, and just and that IA and police referrals are appropriate, punishments are proportionate and within locally published guidelines and that no prisoner is charged or punished for any reason other than their disciplinary behaviour. The Governor will hold regular meetings of staff who conduct adjudications to discuss these issues, and to review local statistics on rates and trends in offending, levels of punishment, remission of additional days, quashed and mitigated cases, and also consider the protected characteristic and other social breakdown of charged and punished prisoners. Also, whether the charges for disciplinary behaviour, aggravated by, or involving offences towards persons sharing, a 'protected characteristic' are appropriately identified, assessed, and receive parity in adjudication punishments. See also paragraph 6.198 for similar monitoring of minor reports, in establishments where they operate.

6.242 Local quality assurance reviews should be fed back to adjudicating staff by governors to ensure that shortfalls in the adjudication documentation, enquiry and process are addressed. In addition, this would enable learning, both at an individual level and building on aggregated thematic information and trends in order to inform wider staff learning and to support decision making by the senior leadership team. Where significant flaws are identified, the Governor can remit the punishment or set the finding aside in line with paragraph 6.201.

6.243 As part of a deterrent strategy, it is good practice to publicise to prisoners the adjudication outcomes and tariffs, and in particular, incidents which are referred to the police with the outcome of prosecutions. Decisions to charge prisoners is an area where there appears to be disproportionate outcomes for prisoners from ethnic minority groups. It is good practice for prisons to hold forums within Prison Councils as a suitable route to appropriately consider any disproportionality in the application of the adjudication system and improve transparency in the system. There may be others such as equality action teams where representation is appropriate, or governors may wish to use the Incentive Forums in Prisons set out in the Incentives Policy Framework and adapt the terms of reference accordingly.

6.244 Taking the above into account, an assurance checklist of topics that governors must discuss when conducting adjudication standardisation meetings is provided below. Most of the topics can be found in the Adjudications Data feature on DPS.

Assurance checklist

- Attendance list – noting which operational managers have attended and those that have not. A typical attendance list may include the deputy governor, all available adjudicating governors, an ALO/s, and representatives from the Segregation Unit, chaplaincy, healthcare, psychology, safety, diversity, and an IMB member.
- Latest adjudication data (for example number of prisoners placed on report, number of outcomes, number of punishments, consider trends from previous quarter) from the last three months – this should also be broken down by age, ethnicity, religion, and any other protected characteristics they hold information on.
- Review of tariffs (local punishment guidelines), and local catalogues of payback punishment projects and rehabilitative activities, which should include consulting with

relevant providers and the Area Property Operations Manager and Facilities Management supplier in respect of suitable projects for payback punishment.

- Discussion on neurodivergent prisoners – if the prison has data (how many of these prisoners had an adjudication, what reasonable adjustments were made for them, were they effective).
- If there is any noticeable disproportionality in adjudication data, there should be a discussion on next steps to address this, for example sending staff members on training such as cultural intelligence training.
- Discussion on the quality of adjudications through a sample taken – the notice of report (DIS1), the conduct report (DIS6) and the record of hearing (DIS3) should all be discussed.
- Discussion on IA referrals (has the prison had adjudications referred back by the IA, what is the prison doing to ensure that this is not repeated, has the prison missed the 48-hour rule to send paperwork recently, what processes are in place to make sure that this does not happen again).
- Discussion on successful appeals/flawed cases (how many took place in the last three months, why were the adjudications flawed, what needs to be done to stop this happening again).
- Discussion on cases that were 'not proceeded with' (what procedural errors have led to cases being thrown out since the last meeting, how can staff be trained to avoid this happening again).
- Discussion on the interaction between the adjudications system and the incentives system (which system is being used for which types of misbehaviour, are incentive reviews taking place following adjudication outcomes where the prisoner was moved down an incentive level(s) for a serious single incident).
- Discussion on how best to communicate all messages to staff.

Retention of records

6.245 All adjudication records, including CCTV/Pin Phone/Video evidence (if permitted under GDPR and the Data Protection Act 2018) are to be retained for the periods specified in PSI 04/2018 Records, Information Management and Retention Policy and beyond that if necessary where any review, Independent Prisoner Complaint Investigation team's investigation or court case is ongoing.

7. Individual charges, offences, and punishments

Charges and guidance for proving individual offences

7.1 The wording of all charges should reflect that of the Rule(s) under which they are laid (amending masculine pronouns to feminine, or plural, as necessary). Examples are provided and should be adapted as appropriate.

7.2 The Prison and YOI Rules provide specific charges for offences demonstrating or motivated by hostility towards persons sharing, a protected characteristic (age, race, disability, religion or belief, gender, gender reassignment, sexual orientation, marriage and civil partnership, pregnancy and maternity). For these offences, it must be established beyond reasonable doubt that the offence involved hostility towards a person's protected characteristic. Staff must consider whether the offence involved hostility towards a protected characteristic from the outset of the investigation into the offence because this can be taken into account when considering punishment, in accordance with paragraph 6.128. Where the protected characteristic and non-protected characteristic versions of a charge have been laid, both should be opened at the same time (or at least both opened on the day after the charges are laid).

7.3 Local punishment guidelines should provide for equivalence in punishment where any protected characteristic has been identified as a motivating factor.

7.4 In order to be satisfied that the evidence presented at the hearing has established guilt beyond reasonable doubt, the adjudicator will take account of the criteria provided below on both the charge to be laid and the reasons for it.

PR 51 (1), YOI R 55 (1) commits any assault

'At (time) on (date) in (place) you assaulted (name) by punching them.'

7.5 Considerations:

- Did the accused prisoner apply force to another person, or act in such a way that another person was in fear of force being applied to them?
- Was the force unlawful, i.e., more than was reasonable in the circumstances for self-defence against an assault or to prevent a serious crime?

7.6 Adjudicators should use their own judgment as to what is reasonable, taking account of the accused prisoner's perception of the circumstances, and the difficulty of weighing up the amount of force to use in the heat of the moment. Adjudicators should consider examining use of force statements where force was used against prisoners following an alleged assault. The victim's consent to be injured is not a defence to an assault charge.

PR 51 (1A), YOI 55 (2) commits any assault aggravated by a protected characteristic

'At (time) on (date) in (place) you assaulted (name) by punching them, whilst shouting "(quote words used)" while demonstrating (or 'motivated, partly or wholly' by') hostility towards (name of person)'s (name of protected characteristic/s))".'

7.7 The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. These are listed in section 4 of the Equality Act 2010.

7.8 Assaults may be witnessed by a member of staff or be discovered when reported to a member of staff by the alleged victim or other witness.

7.9 An assault involves unlawful force applied to another person and is therefore not a suitable charge when a prisoner is alleged to have harmed a prison dog. In such circumstances a charge of intentionally obstructing an officer in the execution of their duties (e.g., a dog handler using a dog to conduct a search) may be appropriate.

7.10 Where there is doubt about whether an alleged assault was aggravated by a person's protected characteristic, the prisoner may be charged with both assault and assault aggravated by a person's protected characteristic. The adjudicator will then decide whether the protected characteristic offence is proved beyond reasonable doubt and, if so, dismiss the non-protected characteristic charge, or if not so satisfied will dismiss the protected characteristic charge and proceed to inquire into the non-protected characteristic charge.

7.11 See paragraph 7.154 on attempted assault.

7.12 Considerations: The adjudicator should first consider whether an assault has been committed, according to the criteria above. If so, the adjudicator should then ask:

- At the time of the assault, or immediately before or after doing so, did the accused prisoner demonstrate hostility towards the victim based on the victim having, being presumed to have, or associating with those who have a protected characteristic?
- Or was the offence motivated partly or wholly by the accused prisoner's hostility towards persons based on them sharing, being presumed to share, or associating with those who share, a protected characteristic?

7.13 A racial group means any group of people defined by reference to their race, colour, nationality (including citizenship), ethnic or national origins and includes association with that group. 'Presumed' means presumed by the accused prisoner. The known or presumed correspondence of membership of a racial group with adherence to a particular religion is immaterial to the definition of 'racial group.

7.14 A religious group means any group of people defined by reference to religious belief or lack of religious belief. Adjudicators must be clear on the distinction between an incident that is racially or religiously aggravated.

7.15 In relation to the protected characteristic of age, referring to an age group is a reference to a group of people defined by reference to age, whether that is a particular age or a range of ages.

7.16 A person has a disability if they have a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

7.17 A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing, or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex. A person does not need to have obtained a Gender Recognition Certificate (i.e., to have legally changed sex) or have undergone medical transition (i.e., hormones or surgery) in order to have the protected characteristic of gender reassignment.

7.18 A person has the protected characteristic of marriage and civil partnership if the person is married or is a civil partner.

7.19 A person who has the protected characteristic of sex is a reference to a man or a woman.

7.20 Sexual orientation means a person's sexual orientation towards persons of the same sex, the opposite sex, or either sex. Someone who has this protected characteristic is a person who is of a particular sexual orientation.

7.21 A person has the protected characteristic of pregnancy and maternity if they are pregnant or a mother.

PR 51 (1B), YOI R 55 (2A) commits any sexual assault

'At (time) on (date) in (place) you sexually assaulted (name) by (describe behaviour)'

7.22 Considerations:

- Sexual assault may be experienced or witnessed by a member of staff, or be discovered when reported to a member of staff by the alleged victim or another witness.
- A prisoner commits a sexual assault if all the criteria in section 3(1) of the Sexual Offences Act 2003 are fulfilled:
    - (a) the prisoner intentionally touches another person (B),
    - (b) the touching is sexual,
    - (c) B does not consent to the touching, and
    - (d) the prisoner does not reasonably believe that B consents.
- Examples would include doing the following without the other person's consent, and without reasonably believing in their consent:
    - Slapping an officer or other prisoner on the buttocks;
    - Touching an officer's or other prisoner's breasts;
    - Kissing an officer or other prisoner.

7.23 All sexual assault cases, where there is a dispute about consent or reasonable belief in it (as opposed to a dispute about whether the sexual assault happened at all), should be referred to the IA (see paragraph 6.65). Therefore, governors should not have to determine disputes of consent or reasonable belief in it.

7.24 When a sexual assault is investigated, an assault incident must be reported to the Incident Reporting System.

PR 51 (1C), YOI R 55 (2B) exposes himself, or commits any other indecent or obscene act

'At (time) on (date) in (place) you exposed yourself to (name) by (describe behaviour)' or 'At (time) on (date) in (place) you committed the indecent (or 'obscene') act of (describe behaviour)'

7.25 Considerations:

- A prisoner commits exposure if the criteria in section 66(1) of the Sexual Offences Act 2003 are fulfilled:
    - a) the prisoner intentionally exposes their genitals, and
    - b) they intend that someone will see them and be caused alarm or distress.

- A prisoner would not commit exposure if they intentionally exposed their genitals as part of a consensual, private sexual encounter (see paragraphs 7.104-7.105 on sexual acts between prisoners), as they would not have the requisite intention to cause alarm or distress.
- A prisoner would also not commit exposure if they were sharing a cell, and they unintentionally exposed their genitals to their cellmate whilst they were showering or getting changed, as they would neither have the requisite intention to expose, or to cause alarm or distress. However, if a prisoner sharing a cell did expose their genitals to their cellmate with the requisite intentions, they would commit the offence.
- 'Any other indecent or obscene act' covers acts which do not constitute exposure, but are otherwise indecent or obscene. This may include lewd hand gestures or simulating sexual acts, or acts where genitals are not necessarily visible but the prisoner is engaging in behaviour which if done with intention or recklessness as to other people seeing, is indecent or obscene (e.g., masturbating).

7.26 Exposure or other indecent and obscene acts should not be reported on the Incident Reporting System as a sexual assault.

PR 51 (1D), YOI R 55 (2C) sexually harasses any person

'At (time) on (date) in (place) you sexually harassed (name) by (describe behaviour)'

7.27 Considerations:

- A prisoner sexually harasses a person if the criteria in section 26(2) of the Equality Act 2010 are fulfilled:
  - They engage in in unwanted conduct of a sexual nature, and
  - the conduct has the purpose or effect of—
    - (i) violating the dignity of another prisoner or an officer, or
    - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for another prisoner or an officer.
- Examples would include making inappropriate or unwanted sexual comments. This behaviour could be verbal, written or drawn (such as sexually inappropriate or explicit letters, notes or graffiti).

7.28 Sexual harassment should not be reported on the Incident Reporting System as a sexual assault.

PR 51 (2), YOI R 55 (3) detains any person against his will

'At (time) (or 'Between (time) and (time)') on (date) in (place) you detained (name) against their will.'

7.29 Considerations:

- Did the accused prisoner detain the victim, using force or the threat of force, or any item, to curtail the victim's freedom of movement?
- Was such detention against the victim's will? Or was there collusion between the accused prisoner and the 'victim'? An incident may start with collusion, but later turn into genuine detention if the victim changes their mind about continuing. The adjudicator should take account of any injuries sustained by the victim during the

incident, or any intimidation by the accused prisoner, and any evidence of their relationship before the incident began (e.g., friendship or enmity).

PR 51 (3), YOI R 55 (4) denies access to any part of the prison / young offender institution to any officer or any person (other than a prisoner / inmate) who is at the prison / young offender institution for the purpose of working there

'At (time) (or 'Between (time) and (time)') on (date) in (place) you denied access to (part of prison/YOI) to (name), an officer of the prison/YOI (or 'a person who was at the prison/YOI for the purpose of working there') by barricading your door.'

7.30 A 'detains' charge is intended to deal with a hostage taker, but where collusion with the 'victim' is suspected a 'denies access' charge may be appropriate additionally or alternatively, where the incident also involved a refusal to allow staff to enter a cell or other part of the establishment.

7.31 Considerations:

- Did the accused prisoner deny access to anywhere? Did the prisoner construct a barricade, or other impediment to access, or use another means of denying access?
- Was the location of the incident part of a prison or young offender institution?
- Was, or were, the person(s) denied access a prison officer (including governors or other prison staff) or anyone else other than a prisoner, who was at the establishment in order to work there?

PR 51 (4), YOI R 55 (5) fights with any person

'At (time) on (date) in (place) you were fighting with (name)'

7.32 A fight involves two or more persons assaulting each other by inflicting unlawful force. But the force will not be unlawful if the accused only acted in self-defence in response to an assault.

7.33 If, as a result of evidence given during the hearing, it appears that one prisoner acted in self-defence rather than a fight, the fight charge may be dismissed against both of the accused and an assault charge laid against the prisoner shown to be the aggressor. The 48-hour time limit for laying the assault charge begins when that offence is 'discovered' during the fight charge hearing; a fresh adjudicator who is de novo will hear this charge.

7.34 Considerations:

- Were all those prisoners charged with the offence engaged in fighting each other in the ordinary sense of the word, i.e., inflicting unlawful force (see paragraph 7.154) on each other? Or was one (or more, if more than two prisoners were involved) only using reasonable force in self-defence? If so, the charge of fighting should be dismissed, and the other prisoner (the aggressor) charged with assault, within 48 hours of the 'discovery' of the assault offence as mentioned in paragraph 7.33.

PR 51 (5), YOI R 55 (6) intentionally endangers the health or personal safety of others or, by his conduct, is reckless whether such health or personal safety is endangered

'At (time) on (date) in (place) you intentionally endangered (or 'by your conduct you recklessly endangered') the health or personal safety of (name(s)) by throwing a can of corrosive fluid to the ground.'

7.35 This offence can encompass a range of actions or omissions by prisoners that are intended to cause harm to others (other than assaults or fights), or where the prisoner is careless as to whether harm may result.

7.36 This charge may be appropriate in the case of a dirty protest, in addition to a charge under PR 51 (17)/YOI 55 (18). A prisoner found in possession of a container of (possibly) adulterated urine, probably with the intention of spoiling a MDT, could be charged under this Rule, but a charge under PR 51 (6)/YOI 55 (7), or PR 51 (25)(a)/YOI R 55 (29)(a) may be more appropriate.

7.37 Although prisoners should not normally be charged with a disciplinary offence for acts of self-harm, or preparation for self-harm, a charge under PR 51 (5) / YOI R 55 (6) may exceptionally be appropriate where the prisoner's actions also intentionally or recklessly endangered others, for example starting a fire (or in that example a charge under PR 51 (16) / YOI R 55 (17).

7.38 Considerations:

- Was the health or personal safety of at least one person, other than the accused prisoner, endangered? Was there a definite risk of harm to at least one specific person's health or safety?
- If so, was this danger caused by the accused prisoner's conduct?
- If so, was the accused prisoner intent on causing this danger, or reckless as to whether it would occur?

7.39 Prisoners may be found to have been reckless if they were aware, or foresaw, that their behaviour could endanger someone else's health and safety, but still continued with the behaviour. The test is not whether a reasonable person would have foreseen the risk, only whether the accused prisoner foresaw it. The adjudicator should take into account the prisoner's personal characteristics, including age, maturity, and mental capacity (see paragraphs 6.15-6.16), when considering whether they foresaw the risk. The risk must also be one that it was unreasonable for the prisoner to take in light of the circumstances as the prisoner perceived them to be at the relevant time.

7.40 If a prisoner's actions involved an act of self-harm, or preparation for such an act, it would not normally be appropriate to lay a charge for an alleged disciplinary offence, but this may be done exceptionally if others were endangered (for example, by starting a fire). In such a case the adjudicator should take account of the accused prisoner's state of mind at the time of the incident.

PR 51 (6), YOI R 55 (7) intentionally obstructs an officer in the execution of his duty, or any person (other than a prisoner / inmate) who is at the prison / young offender institution for the purpose of working there, in the performance of his work

'At (time) on (date) in (place) you intentionally obstructed (name), an officer of the prison/YOI, in the execution of their duty (or 'a person who was at the prison/YOI for the purpose of working there, in the performance of their work') by placing your foot in the door.'

7.41 This might be an appropriate charge when a prisoner adulterates an MDT sample (obstructing an officer whose duty is to conduct the MDT), as an alternative to disobeying an order to comply with the MDT process by providing an unadulterated sample.

7.42 Considerations:

- Did the accused prisoner behave in such a way as to cause an obstruction (whether by means of a physical barrier, or some other behaviour that prevented or impeded an officer or other person from carrying out their duty or work properly, such as providing false information, providing an adulterated sample for a MDT, interfering with a search, etc.)?
- Was the person so obstructed an officer, governor, another member of the prison staff, or anyone else, other than a prisoner, who was at the prison in order to work there?
- Was the person obstructed attempting to carry out their duty as an officer of the establishment, or to perform their work?
- Did the accused prisoner intend that their behaviour would obstruct the officer or other person in the execution of their duty or performance of their work?

PR 51 (7), YOI R 55 (8) escapes or absconds from prison / a young offender institution or from legal custody

'At (time) (or 'between (time) and (time)) on (date) in (place) you escaped/absconded from HMP/HMYOI (name) (or 'from an escort').

7.43 There is no offence in law of 'absconding' from prison, only of 'escaping' either with or without the use of force. But for adjudication purposes an escape may be defined as a prisoner leaving prison custody without lawful authority by overcoming a physical security restraint such as that provided by fences, locks, bolts and bars, a secure vehicle, handcuffs or by the officer escort (see paragraph 6.9 for escapes from courtrooms ('dock jumpers')). A prisoner absconds if they are unlawfully at large due to leaving open prison conditions without permission. It is only possible to abscond from open prison conditions.

7.44 An escape or an abscond is 'discovered' (for the purposes of charging with a disciplinary offence) when the prisoner is returned to prison custody, or when someone taken into custody is identified as an escapee. The 48-hour time limit for laying a charge begins at that point. The charge is to be laid by the establishment from which the escape/abscond occurred, so if a prisoner is returned to custody in a different establishment, that establishment must inform the former location and obtain relevant documentation as soon as possible. If the prisoner is returned to custody by the police, a disciplinary charge may still be laid. However, if the police then confirm that the prisoner is being prosecuted for the escape, the adjudicator will dismiss the charge in order to avoid double jeopardy.

7.45 Considerations:

- At the time of the alleged offence, was the prisoner held in a prison or young offender institution, or in the legal custody of prison staff or escort contractor's staff? A copy of the warrant or other document authorising detention in a prison or YOI, and evidence of the prisoner's release date at the time of the offence should be produced in evidence.
- Did the prisoner escape or abscond from an establishment or legal custody? There is no offence in law of 'absconding' from prison, only of 'escaping' either with or without the use of force. The adjudicator should decide which description best fits the incident (see paragraph 7.43). It would be a defence if the prisoner could produce evidence of authorisation to leave the establishment or the control of the escort, or genuinely believed that such permission had been given.

- Did the prisoner intend to escape/abscond? The adjudicator must be satisfied that the prisoner was aware that they were leaving the establishment or legal custody without lawful authority, taking into account any actions leading up to, and following the incident, and any explanation they offered when back in custody. The adjudicator must decide whether any defence offered is credible.

7.46 An escape from a courtroom while the court is sitting (e.g., 'dock jumping') is a matter for the court, and no disciplinary charge should be laid in respect of such an incident.

7.47 Before proceeding with a hearing on an escape charge, adjudicators should check whether the prisoner is to be/has been prosecuted for the escape, to avoid double jeopardy.

PR 51 (8), YOI R 55 (9) fails to comply with any condition upon which he is / was temporarily released under rule 9 / rule 5 of these rules

'At (time) (or 'between (time) and (time)') on (date) in (place), having been temporarily released, you failed to comply with the condition that you should (quote condition).'

7.48 This is the appropriate charge when a prisoner fails to return from ROTL (release on temporary licence) on time or fails to comply with a restriction or requirement in the licence (e.g., not to contact a named person, or to attend an arranged appointment, etc.). The prisoner cannot be charged under this rule for misbehaviour that was not specifically prohibited by a licence condition. But criminal behaviour while on licence could lead to a prosecution.

7.49 Failure to return from ROTL on time, or failure to comply with any requirement whilst on ROTL, is 'discovered' (for the purposes of charging with a disciplinary offence) when the prisoner has returned to their establishment. The 48-hour time limit for laying a charge begins at that point.

7.50 See below for prisoners who are intoxicated on return to the establishment, or who have taken illegal drugs while on licence.

7.51 Considerations:

- Was a properly authorised temporary release licence issued to the accused prisoner, with clear and unambiguous terms that the prisoner was informed of? The licence, or a copy, should be produced in evidence.
- Did the prisoner fail to comply with any of the conditions in the licence while on temporary release, including the condition relating to the time of return to the establishment? Was the prisoner on an outside working party?
- What, if any, explanation has the prisoner offered for the failure to comply? Is there any evidence available to either support or refute the prisoner's explanation (e.g., a medical certificate confirming the prisoner was too ill to travel back to the establishment on time, or a news report confirming transport problems outside the prisoner's control)? The adjudicator must decide whether the prisoner's defence is credible or not, and whether the failure to comply was reasonable in the circumstances.

7.52 A charge under this rule must relate only to behaviour that was disallowed by the terms of the licence and is not being prosecuted in a court. Adjudicators should confirm whether the prisoner faces any criminal charges relating to actions whilst on licence (including a charge of being unlawfully at large, under the Prisoners (Return to Custody) Act 1995).

PR 51 (9), YOI R 55 (10) is found with any substance in his urine which demonstrates that a controlled drug, pharmacy medication, prescription only medicine, psychoactive substance or specified substance has, whether in prison or while on temporary release under rule 9 / 5, been administered to him by himself or by another person (but subject to Rule 52 / 56)

'Between (date) and (date) you had a substance in your urine which demonstrated that (name of controlled drug, pharmacy medicine, prescription only medicine, psychoactive substance or specified substance) has, whether in prison or on temporary release under PR 9/YOI R 5, been administered to you by yourself or by another person between the dates of (date) and (time and date).'

7.53 Prisoners can be charged with being found with a substance in their urine which demonstrates that a controlled drug, pharmacy medication, prescription only medication, psychoactive substances or specified substances has been administered to them. HMPPS can test for a wide range of substances, with a broad definition of psychoactive substances and definitions of prescription only and pharmacy medicines.

7.54 This charge should be laid following a positive result from a MDT (not a compact or voluntary drug test failure), with separate charges being laid for each drug, medicine or substance indicated in the test result. Full details of MDT procedures are set out in PSO 3601 'Mandatory Drug Testing'. The offence is 'discovered', and the 48-hour time limit for charging normally begins, when an MDT screening test result arrives at the establishment from the laboratory (not when the email is first noticed). But if the MDT screening test result indicates that an opiate, amphetamine or any other drug type that can be prescribed has been taken, and the prisoner has been receiving prescribed medication, the prison may delay charging until the result of a confirmation test is received (see Chapter 7 of PSO 3601 Mandatory Drug Testing). If the confirmation test indicates that a different drug to that originally identified was taken, the original charge will be dismissed and a new charge, naming the drug that the test has now identified, laid within 48 hours of the confirmation test being received.

7.55 Regardless of their plea, if the MDT result indicates that a prisoner has taken opiates, amphetamines or any other drug type that can be prescribed a confirmation test will be requested. If the MDT screening test result indicates another drug has been taken and the prisoner pleads not guilty or equivocates, a confirmation test will be requested. See paragraphs 7.14-7.17 of PSO 3601 Mandatory Drug Testing for further guidance on screening tests, confirmation tests and pleas.

7.56 Under PR 50 (3)/YOI R 53 (3) an officer is required to inform the prisoner that a refusal to provide a sample for an MDT may lead to a disciplinary charge. Rules 52/56 explain the defences to this charge as below.

7.57 Considerations:

- Has the accused prisoner undergone a MDT, that was properly conducted according to the procedures described in PSO 3601 Mandatory Drug Testing, with no significant irregularities in the chain of custody or other significant errors, and that has produced a positive result indicating that the prisoner took a controlled drug, pharmacy medicine, prescription only medicine, psychoactive substance or specified substance? The test report and other MDT paperwork should be produced in evidence. The adjudicator must decide whether any errors or irregularities are significant (for example, a misspelt name might not be significant, but a failure to record a name or number at all would be).

- Do the dates referred to in the wording of the charge confirm that the drug, medicine, or substance was taken at a time when the prisoner was subject to Prison or YOI Rules, including temporary release? The second date in the charge should be the date the sample was collected for the MDT, and the first date (when the drug, medicine or substance would have been taken) counted back from the collection date by the minimum waiting period for the drug, medicine or substance that tested positive (see PSO 3601 Mandatory Drug Testing, Table 8.1). The table of waiting periods should be available for consultation by the adjudicator and prisoner during the hearing.
- The adjudicator should confirm that the prisoner has not previously been charged for misusing the same drug, medicine or substance within a timeframe that could mean that the current charge may relate to the earlier incident of drug-taking.
- Has a confirmation test been obtained, where necessary? (See paragraphs 7.54-7.55).
- Has the prisoner put forward a defence under PR 52/YOI R 56, to show that the controlled drug, pharmacy medicine, prescription only medicine, psychoactive substance, or specified substance:
    - was lawfully in the prisoner's possession for personal use prior to its administration, or was lawfully supplied and administered to the prisoner by another person
    - was administered when the prisoner did not know or have reason to suspect that such a drug, medicine or substance was being administered
    - was administered to the prisoner under duress, or without consent, when it was not reasonable to resist

7.58 The adjudicator must consider whether any defence put forward by the prisoner is plausible, taking into account any evidence available to support or refute it. If the prisoner does not offer a defence, or the adjudicator does not accept it as credible, there is no need for further evidence as to the prisoner's knowledge or intent. PSO 3601 Mandatory Drug Testing paragraphs 4.70-4.75 gives guidance on conducting MDTs on Muslim prisoners during the month of Ramadan, when they are required to fast during the day. Similar procedures may apply to other religious festivals involving total fasting. If a prisoner (of any religion) states that they were unable to comply with an order to provide a sufficient urine sample because they were undergoing a voluntary fast, other than one required as a religious obligation during a festival, hmppsdrugtesting@justice.gov.uk should be asked for advice.

PR 51 (10), YOI R 55 (11) is intoxicated as a consequence of consuming any alcoholic beverage (but subject to rule 52A / 56A)

'At (time observed by reporting officer) you were seen to be intoxicated (briefly describe circumstances)'

7.59 This charge is appropriate when a prisoner's behaviour clearly indicates intoxication, as opposed to having drunk a small amount of alcohol.

7.60 A prisoner who returns from ROTL showing signs of intoxication may be charged under this rule. If the licence included a requirement not to drink alcohol while temporarily released a charge under rule 51 (8)/rule 55 (9) may also be appropriate.

7.61 Rules 52A/56A explain the defences to this charge as below.

7.62 Considerations:

- Was the accused prisoner intoxicated? The adjudicator should consider whether the evidence indicates that the prisoner had lost self-control or was merely exuberant but still manageable.
- Was the intoxication caused, partly or wholly, by the prisoner having consumed an alcoholic beverage? The adjudicator should consider the reporting officer's and any other witnesses' evidence of the prisoner's behaviour, and any impairment tests (including balance and coordination, ability to pay attention and follow simple instructions, and division of attention between multiple tasks). Is there any evidence that the prisoner's behaviour or impairment may have another cause, e.g., side effects of medication, or any physical or mental illness or disability?
- Is there evidence of the presence of alcohol from a positive breath test? (Such a test can only provide support to impairment testing, and is not in itself proof of intoxication)
- Has the prisoner put forward a defence under PR 52A/YOI R 56A, i.e.,
    - the prisoner did not know or had no reason to suspect they were consuming alcohol
    - the prisoner consumed the alcohol without consent, when it was not reasonable to resist

7.63 The adjudicator must consider whether any defence put forward by the prisoner is plausible, taking into account any evidence available to support or refute it.

PR 51 (11), YOI R 55 (12) consumes any alcoholic beverage whether or not provided to him by another person (but subject to rule 52A / 56A

'At (time observed by reporting officer) you were believed to have consumed an alcoholic beverage'.

7.64 This charge is appropriate when a prisoner's behaviour indicates alcohol has been drunk, but not enough to cause intoxication justifying a charge under rule 51 (10)/55 (11), or when the prisoner is seen to drink something that the reporting officer believes contains alcohol (see below for evidence that a liquid may be alcoholic).

7.65 Considerations:

- Does the evidence of the reporting officer and other witnesses about the accused prisoner's behaviour indicate consumption of an alcoholic beverage? The evidence should be such as would lead a reasonable person to reach this conclusion, although not necessarily indicating intoxication (according to the tests in the previous charge)
- Alternatively, did the reporting officer or another witness see the prisoner consuming something believed to be an alcoholic beverage? This belief may be based on (for example) seeing the prisoner drinking from a bottle or can thought to contain alcohol, or a container containing a fermenting liquid. If available this item should be produced in evidence
- Has the prisoner put forward a defence under PR 52A/YOI R 56A (see above)?

7.66 The adjudicator must consider whether any defence put forward by the prisoner is plausible, taking into account any evidence available to support or refute it.

PR 51 (12) / YOI R 55 (13) has in his possession (a) any unauthorised article; or (b) a greater quantity of any article than he is authorised to have

'At (time) (or 'between (time) and (time)) on (date) in (place) you had in your possession an unauthorised article, namely a mobile phone (or 'a greater quantity of (article) than you were authorised to have, namely (number/quantity of article)'.

7.67 If a prisoner is found in possession of a substance suspected of being a controlled drug, the charge may be worded as "possession of an unauthorised article, namely a white powder" unless forensic testing has been carried out to prove that the substance is a controlled drug. Contact HMPPSdrugtesting@justice.gov.uk for information on accessing forensic testing for this purpose. See under PR 51 (24)/YOI R 55 (27) (paragraphs 7.146–7.147) for an exception to this guidance. Where the HMPPS Seizures Testing contract is used to identify the substance present, it is important to note that the 'standard' turn-around times to receive a results report is 28 days following receipt of the request. The governor should be clear about these timescales when opening and adjourning the initial hearing. It is important that operational staff are not specific about the substance on the seized item when placing a prisoner on report in case following forensic analysis of a suspected substance, the result is different to what was originally thought. For items testing positive from trace detection equipment, please refer to the Use of Drug Trace Detection Equipment in Prisons Policy Framework for guidance on adjudication charges.

7.68 If a prisoner is found in possession of more than one allegedly unauthorised article, a single charge listing the items may be laid – but if it later turns out that some of the items were authorised there is a risk that the whole charge may be dismissed or quashed on review. It is safer to lay separate charges for each item individually, so that if one charge is dismissed the others may still proceed.

7.69 A prisoner charged with possession of illicit alcohol ('hooch') may dispute the alcoholic nature of the liquid without scientific evidence, comparable to a drug confirmation test. Since no such test is available within prisons it would be preferable to phrase the charge as 'you had in your possession an unauthorised article, namely a fermenting liquid.' The nature of the liquid should be recorded soon after its discovery. A liquid may reasonably be described as fermenting from its frothy appearance or smell. It is not necessary to prove that the liquid is alcoholic, only that the prisoner is not authorised to have it in possession. If there is a large quantity of fermenting liquid that would be difficult (or potentially dangerous) to store, the reporting officer should include information about the quantity and nature of the liquid in the evidence, supported by photographic evidence and a small sample. The rest of the liquid may then be disposed of.

7.70 Prisoners found in possession of a mobile phone or a SIM card must be placed on report. These items may subsequently be sent either to the police, or an approved HMPPS digital forensics capability, in line with the guidance in PSI 30/2011 Instructions on Handling Mobile Phones about justifying the request for analysis. A photograph of the items should first be taken for production as evidence at the adjudication hearing. Further guidance on this procedure is in paragraphs 2.4 and 2.27-2.30 of PSI 30/2011 Instructions on Handling Mobile Phones and SIM Card Seizures. See also the Management and Handling of Evidence Policy Framework.

7.71 Considerations: The three elements that must be satisfied before this charge is proved beyond reasonable doubt are:

- Presence – the article exists, it is what it is alleged to be, and was found where alleged by the notice of report (or was in the accused prisoner's possession at the material

time – see paragraph 7.73). If the item is no longer available (e.g., a fermenting liquid /'hooch' that has been disposed of, or a mobile phone/ SIM card that has been sent for analysis) a photograph may be accepted as evidence that it existed (see paragraphs 2.27-2.30 of PSI 30/2011 Instructions on Handling Mobile Phones and SIM Card Seizures on photographing mobile phones)

- Knowledge – the accused prisoner knew of the presence of the article and that it was unauthorised or a greater quantity than authorised.
- Control – the accused prisoner had sole or joint control over the article at the time it was discovered (or shortly before it was discovered, if it was abandoned, or at the material time). Intelligence gleaned from a mobile phone or SIM card interrogation may be used as evidence to support an adjudication, but only if the risk of disclosing the information is acceptable. See paragraph 2.29 of PSI 30/2011 Instructions on Handling Mobile Phones and SIM Card Seizures.

7.72 An article will be unauthorised if the prisoner has not been allowed to keep it in possession, under the establishment's local prisoner property rules and incentives scheme. Authorised property should be recorded on the prisoner's property cards or other local record. Similarly, the quantity of an article allowed to be held in possession will be determined by local rules. Prisoners should have been informed of these rules during induction.

7.73 If the prisoner puts forward a defence of believing the article to be authorised or believing that the quantity was within permitted limits (or that there was no limit), the adjudicator should consider whether such a belief was reasonable in the circumstances. Similarly, if another prisoner claims ownership of the article, the adjudicator should consider whether this is plausible, or whether there is collusion between the prisoners, or intimidation by one or the other. This may be difficult to decide where the prisoners share a cell and ownership may be in doubt, or where the prisoner offering to take the blame has been released since the offence was discovered.

7.74 If the notice of report lists a number of allegedly unauthorised articles under a single charge, the adjudicator may find some of them proved to be unauthorised, and others not. But there is then a risk that if the prisoner requests a review the whole finding may be quashed. This risk may be avoided if separate charges are laid in respect of each article, and the adjudicator inquiries into each one individually.

PR 51 (13) / YOI R 55 (14) sells or delivers to any person any unauthorised article

'At (time) on (date) in (place) you delivered an unauthorised article, namely (e.g., a SIM card) to (name).'

7.75 This charge is appropriate where the article is by its nature unauthorised (e.g., drugs), or not authorised to be in the possession of the giver. It is not necessary to show which of the two methods of passing, selling or delivering, was used.

7.76 Considerations:

- Did the accused prisoner sell or deliver an article to another person (not necessarily another prisoner)? (It is not necessary to define which method of passing the article, selling or delivering, was used)
- Was the article unauthorised?

7.77 If the prisoner puts forward a defence of believing the article to be authorised, or that its disposal was allowed in that way, the adjudicator should consider whether such a belief was reasonable in the circumstances.

PR 51 (14) / YOI R 55 (15) sells or, without permission, delivers to any person any article which he is allowed to have only for his own use

'At (time) on (date) in (place) you sold (or 'delivered without permission') (e.g., a radio) which you were allowed to have only for your own use to (name).'

7.78 This charge is appropriate where the article is permitted to be in the possession of the giver, but not to be passed on without permission.

7.79 Considerations:

- Did the accused prisoner sell or, without the permission of an officer or other person authorised to give permission, deliver an article to another person (not necessarily another prisoner)?
- Was the article only authorised for the accused prisoner's own use?

7.80 If the prisoner puts forward a defence of believing that permission had been given to deliver the article to another person, or that it was not restricted only to their own use, the adjudicator should consider whether such a belief was reasonable in the circumstances.

PR 51 (15) / YOI R 55 (16) takes improperly any article belonging to another person or to a prison / young offender institution

'At (time) (or 'between (time) and (time)') on (date) in (place) you took improperly (article) belonging to (name of person or establishment).'

7.81 This charge is appropriate whenever a prisoner, without permission, takes anything that does not belong to them. If the prisoner attempts to gain control of an article, but is unsuccessful, a charge under PR 51 (25) (a)/YOI R 55 (29) (a) will be more appropriate. If a prisoner improperly obtains something other than a physical article (e.g., abuse of the PIN phone system) a charge under PR 51 (23)/YOI R 55 (26) may be appropriate.

7.82 Considerations:

- Did the accused prisoner take the article?
- Did the article belong to another person, or a prison/YOI?
- Did the accused prisoner have the permission of the owner of the article, or (in the case of prison/YOI property) the permission of a member of staff with authority to give permission, to take the article?

7.83 If the prisoner puts forward a defence of believing they owned the article, or had permission to take it, the adjudicator should consider whether such a belief was reasonable in the circumstances.

PR 51 (16) / YOI R 55 (17) intentionally or recklessly sets fire to any part of a prison / young offender institution or any other property, whether or not his own

'At (time) on (date) in (place) you intentionally (or 'recklessly') set fire to (part of the prison/YOI) (or (an item of property)).'

7.84 See paragraph 7.37 for fires started in connection with self-harm.

7.85 Considerations:

- Did the accused prisoner set fire to part of the prison/YOI, or to any property (whether their own or someone else's)?
- Did the prisoner intend to start the fire, or was it an act of recklessness? See paragraph 7.39 for the definition of recklessness.

7.86 It would not normally be appropriate to charge a prisoner with this offence if it was done in the context of self-harm, but if others' health and safety is endangered a charge under PR 51 (5)/YOI R 55 (6) may exceptionally be laid (or PR 51 (16)/YOI R 55 (17).

PR 51 (17) / YOI R 55 (18) destroys or damages any part of a prison / young offender institution or any other property, other than his own

'At (time) on (date) in (place) you destroyed (or 'damaged') a (part of prison/YOI) (or (an item of property) belonging to HMP/YOI (name of establishment) (or 'belonging to (name of person)')

7.87 This charge may be appropriate in the case of a dirty protest, in addition to a charge under PR 51 (5)/YOI 55 (6) – intentionally endangers the health or personal safety of others or, by their conduct, is reckless whether such health or personal safety is endangered – and, if a prisoner is found guilty of this charge in respect of destroying or damaging the prison or prison property, the adjudicator will require the prisoner to pay compensation for damaging prisons or prison property unless there are sufficiently compelling reasons to make a lesser award including to zero, in accordance with Prison Rule 55AB/YOI Rule 60AB (further guidance on the compensation requirement can be found in paragraphs 6.108-6.127).

7.88 Considerations:

- Did the accused prisoner destroy or damage part of a prison/YOI, or any other property?
- In the case of other property, did it belong to someone other than the accused prisoner?

7.89 In order to find guilt the adjudicator must be satisfied that damage etc. was actually caused by the prisoner not merely that in the prisoner was in possession of a damaged article, or present in a damaged part of the prison/YOI.

7.90 If the prisoner puts forward a defence of believing that permission or a lawful excuse had been given to destroy or damage the part of the prison/YOI property, or that they owned the property, the adjudicator should consider whether such a belief was reasonable in the circumstances.

7.91 As part of the above charge, separately the adjudicator will consider imposing a condition for the prisoner, if found guilty of the offence in respect of destroying or damaging the prison or prison property. This would be to pay for the cost of making good the damage or the cost of replacement of the property destroyed, unless there are sufficiently compelling reasons to lessen the award. This is set out under Prison Rule 55AB and YOIB Rule 60AB and further guidance on this is found in paragraphs 6.108-6.127. However, this is not to be seen as a punishment but a way for the prisoner to make good the damage they have caused.

PR 51 (17A) / YOI R 55 (19) causes damage to, or destruction of, any part of a prison / young offender institution or any other property, other than his own, aggravated by a protected characteristic

'At (time) on (date) in (place) you damaged (or 'destroyed'') a (part of prison/YOI) (or (an item of property) belonging to HMP/YOI (name of establishment) (or 'belonging to (name of person)') while demonstrating (or 'motivated, partly or wholly, by') hostility towards (name of person)'s (name of protected characteristic/s).'

7.92 The protected characteristics are listed in paragraph 7.7.

7.93 An example of a charge aggravated by a person's protected characteristic might be "…you damaged a radio belonging to (name) which was playing Indian music, whilst shouting "(racist language).""

7.94 Where there is doubt about whether an accused prisoner's actions demonstrated, or were motivated by, hostility towards a person's protected characteristic, the prisoner may be charged with both the protected characteristic and non-protected characteristic charges. The adjudicator will then decide whether the protected characteristic charge is proved beyond reasonable doubt and, if so, dismiss the non-protected characteristic charge, or if not so satisfied will dismiss the protected characteristic charge and proceed to inquire into the non-protected characteristic charge.

7.95 Considerations:

- The criteria for finding guilt are the same as for the previous charge, with the addition that the adjudicator must be satisfied that the accused prisoner's actions demonstrated, or were motivated wholly or partly by hostility towards a person's protected characteristic. Refer to paragraph 7.13 for the definition of membership of a racial group, paragraph 7.14 for the distinction between racial and religious groups, and paragraphs 7.15-7.21 for definitions of each protected characteristic.

7.96 An offence is aggravated by a protected characteristic if:

- at the time of committing the offence, or immediately before or after doing so, the prisoner demonstrates towards the victim of the offence hostility based on the victim having, being presumed to have, or associating with those who have that protected characteristic, or
- the offence is motivated (wholly or partly) by hostility to persons based on them sharing, being presumed to share, or associating with those who share, that protected characteristic

PR 51 (18) /YOI R 55 (20) absents himself from any place (where) he is required to be or is present at any place where he is not authorised to be

'At (time) on (date) you were absent from (place) where you were required to be (or 'you were in (place) where you were not authorised to be')'.

7.97 This charge can apply to incidents within the establishment, or outside where the prisoner is escorted, or briefly goes outside an open prison, with the intention of returning shortly (e.g., visiting a nearby shop). But if the prisoner has no intention of returning, PR 51 (7)/YOI 55 (8) will apply.

7.98 Considerations:

- Was the accused prisoner aware of the requirement to be in a particular place?
- Was the prisoner absent from that place at the material time?

Or

- Was the accused prisoner present in a particular place, knowing that they were not authorised to be there?

7.99 If the prisoner puts forward a defence that they were unaware of the requirement to be in a particular place, or believed that the absence from a particular place, or presence in a particular place was authorised, or had another justification for these actions, the adjudicator should consider whether this belief was reasonable in the circumstances.

PR 51 (19) / YOI R 55 (21) is disrespectful to any officer, or any person (other than a prisoner / an inmate) who is at the prison / young offender institution for the purpose of working there, or any person visiting a prison / young offender institution

'At (time) on (date) in (place) you were disrespectful to Officer (name) (or 'to (name), who was (reason for being at the prison, e.g., a teacher, probation officer, IMB member, visitor, etc.), by (briefly describe how disrespect was demonstrated).'

7.100 The disrespect may be spoken or written or involve physical acts or gestures.

7.101 Considerations:

- Did the accused prisoner act in a way which, in the circumstances, was disrespectful in the ordinary meaning of the term? The adjudicator should decide whether the behaviour was disrespectful, in the context of the circumstances in which it occurred.
- Was the disrespect directed towards a prison officer, or any other person (other than a prisoner) who was at the prison/YOI in order to work there, or a visitor to the prison/YOI?

7.102 If the prisoner puts forward a defence that they did not believe the act to be disrespectful, or that it was not directed towards an officer, person working at the prison/YOI, or a visitor, the adjudicator should consider whether such a belief was reasonable in the circumstances.

PR 51 (20) / YOI R 55 (22) uses threatening, abusive or insulting words or behaviour

'At (time) on (date) in (place) you used threatening (or 'abusive' or 'insulting') words or behaviour towards (name), by saying (quote words used) (or briefly describe behaviour)'

7.103 It is not always necessary to name an individual at whom the words or behaviour were directed.

7.104 There is no Rule specifically prohibiting sexual acts between prisoners, but if they are observed by someone who finds (or could potentially find) their behaviour offensive, a charge under PR 51 (20)/YOI R 55 (22) may be appropriate, particularly if the act occurred in a public or semi-public place within the establishment, or if the prisoners were 'caught in the act' during a cell search. But if two prisoners sharing a cell are in a relationship and engage in sexual activity during the night when they have a reasonable expectation of privacy, a disciplinary charge may not be appropriate.

7.105 Alternatively, a response could be considered under the Incentives Policy Framework which contains an example behaviour expectation noting that prisoners should act with decency at

all times remembering prisons/cells are not private dwellings (this includes not engaging in sexual activity).

7.106 Considerations:

- Did the accused say anything, or behave in a manner, whether on a single occasion or cumulatively over a period of time, that was either threatening, abusive or insulting, in the context of the circumstances at the material time? These terms should be given their ordinary meanings, and the adjudicator should consider how a reasonable person at the scene would view the words or behaviour, bearing in mind that what may be rude or annoying is not necessarily abusive or insulting.

7.107 Threatening behaviour may include acts that cause the victim to fear that unlawful force is about to be inflicted on them, where this charge has been laid as an alternative to attempted assault (see paragraph 7.154).

7.108 Threatening words or behaviour may also include intimidation, or an indication that harm may be done to the victim later.

PR 51 (20A) / YOI R 55 (23) uses threatening, abusive or insulting words or behaviour, which demonstrate, or are motivated (wholly or partly) by, hostility to persons based on them sharing a protected characteristic

'At (time) on (date) in (place) you used threatening (or 'abusive' or 'insulting') words or behaviour towards (name of person), by saying (quote words used) or by behaving (or briefly describe behaviour) whilst demonstrating (or 'motivated, partly or wholly' by') hostility towards (name of person)'s (name of protected characteristic/s)'

7.109 The protected characteristics are listed in paragraph 7.7 above.

7.110 The difference between this and the previous charge is that the words or behaviour demonstrate, or were motivated (wholly or partly) by hostility to a person's protected characteristic/s.

7.111 The use of terms such as 'racist', 'sexist' etc are not in of themselves racist/sexist etc language. A verbal accusation of racism/sexism etc by a prisoner against a member of staff is therefore unlikely in itself to constitute a racist/sexist etc incident.

7.112 Where:

- a prisoner reasonably expresses their opinion on gender identity, in a way which is not threatening or abusive (e.g., if they simply decline to use a transgender prisoner or member of staff's preferred pronouns); or

- their words or behaviour appear to be motivated by gender-critical views (e.g., on the primacy of biological sex); such philosophical beliefs are themselves a protected characteristic.

this should not be sufficient for a charge to be laid.

7.113 Where there is doubt about whether an accused prisoner's actions demonstrate or were motivated by hostility towards a person's protected characteristic, the prisoner may be charged with both the protected characteristic and non-protected characteristic charge.

7.114 The adjudicator will then decide whether the protected characteristic charge is proved beyond reasonable doubt and, if so, dismiss the non-protected characteristic charge, or if not so

satisfied will dismiss the protected characteristic charge and proceed to inquire into the non-protected characteristic charge.

7.115 Considerations:

- The criteria for finding guilt are the same as for the previous charge, with the addition that the adjudicator must be satisfied that the accused prisoner's actions demonstrated, or were motivated wholly or partly, by hostility towards a person's protected characteristic. See paragraphs 7.13 and 7.14 for the definitions of a racial group and a religious group and making the distinction between race or religious hate incidents, and paragraphs 7.15-7.21 for definitions of each protected characteristic.

PR 51 (21) / YOI 55 (24) intentionally fails to work properly or, being required to work, refuses to do so

'At (time) on (date) in (place) you intentionally failed to work properly, by (briefly describe what the prisoner did or didn't do) (or, 'At (time) on (date) in (place), being required to work in (place) (or 'as a cleaner' etc.) you refused to do so.'

7.116 The charge must make clear whether the prisoner did some work, but intentionally failed to do it properly, or refused to work at all.

7.117 This charge is appropriate when the prisoner refuses to work after arriving at the workplace. A refusal to go to the workplace may be charged under PR 51 (18) or (22)/YOI R 55 (20) or (25).

7.118 Considerations:

7.119 <u>Failure to work</u>

- Was the accused prisoner lawfully required to work? (Convicted adult prisoners are required to work in accordance with PR 31, except on recognised religious days – see PR 18. Young offenders may be required to work under YOI Rs 37 and 40; and see YOI R 35)
- Measured against a standard appropriate to the work which the prisoner was required to do, was the work carried out properly?
- Was the prisoner's failure to reach this standard intentional?

7.120 If the prisoner puts forward as a defence the belief that the work was up to the required standard, or that they were unaware of the standard required, or that the failure to work properly was unintentional, the adjudicator should consider whether such a belief or explanation was reasonable in the circumstances.

7.121 <u>Refusal to work</u>

- Was the accused prisoner lawfully required to work (see above)?
- Did the prisoner refuse to work (whether by stating they would not work, or by declining to do what they were required to do)?

7.122 If the prisoner puts forward as a defence the belief that there was no requirement to work, or any other reason for not working, the adjudicator should consider whether such a belief or explanation was reasonable in the circumstances. If the prisoner claims to have been too ill to work, evidence from Healthcare should be sought.

PR 51 (22) / YOI R 55 (25) disobeys any lawful order

'At (time) on (date) in (place) you disobeyed a lawful order to (briefly describe what the prisoner was ordered to do, or stop doing).'

7.123 An order is lawful if it is reasonable and the member of staff giving it is authorised to do so in the execution of their duties.

7.124 A prisoner who adulterates an MDT sample may be charged with disobeying a lawful order to provide an unadulterated sample, or with intentionally obstructing an officer in the execution of their duty to conduct an MDT. A prisoner who refuses to provide any sample may be charged with disobeying a lawful order to comply with the MDT process (see above under PR 51 (9)/YOI R 10).

7.125 Where the governor orders a prisoner to attend court and the prisoner refuses to comply with that order, they should be charged with disobeying a lawful order (the order can be given by a member of staff on behalf of the governor, as per the charge). In many cases it is the governor who is ordered by the court to produce the prisoner and as such they could be charged with contempt of court if the court considers that they failed to comply with a court order. Where it looks likely that a prisoner is going to refuse to attend court, the governor should contact the court as soon as possible so that the court and the governor can decide on the correct approach.

7.126 Considerations:

- Did a member of staff give the accused prisoner a lawful order? An order is lawful if it is reasonable and the member of staff has authority to give it in the execution of their duties. It is not necessary for the member of staff to specifically state that they are giving an order only that they give a clear indication, preferably verbally, to a specific prisoner to do or not do something.
- Did the prisoner understand what they were being ordered to do, or not do? Where a prisoner was required to comply with a MDT or a compulsory test for alcohol, was the prisoner informed that refusal to provide a sample might lead to a disciplinary charge (see PRs 50 (3) (b) and 50B (2) (b)/YOI Rs 53 (3) (b) and 54A (2) (b))?
- Did the prisoner disobey the order? 'Disobey' can mean the prisoner refused to comply with the order, or did not comply with it within a reasonable time (even if eventually complying)

7.127 If the prisoner puts forward the defence of not understanding the order or what it required them to do, or that the order was not lawful, or any other reason for not obeying, the adjudicator should consider whether this explanation was reasonable in the circumstances.

PR 51 (23) / YOI R 55 (26) disobeys or fails to comply with any rule or regulation applying to him

'At (time) on (date) in (place) you disobeyed (or 'failed to comply') with the rule (or 'regulation') requiring you to (briefly describe what the rule or regulation required the prisoner/inmate to do (or not do).'

7.128 'Rule or regulation' can mean the requirements of the Prison or YOI Rules, or a local regulation applicable to that particular establishment or wing etc. Reasonable steps must have been taken to make prisoners aware of any local rules, such as notices on wings, information given during induction, training programmes for prisoners' jobs etc. The local rule or regulation must be lawful (see definition under PR 51 (22)/YOI R 55 (25) above).

7.129 Further advice is provided below on using PR 51 (22) and (23)/YOI R 55 (25) and (26) in relation to foreign national prisoners or immigration detainees who refuse to comply with Home Office requests for information and unauthorised photographs of prisoners:

Foreign National Prisoners (FNPs) and Immigration Detainees – refusal to comply with Home Office requirements

7.130 A FNP or immigration detainee who refuses to attend a pre-arranged interview with the Home Office, or who refuses to return a form or provide fingerprints, where it is within their power to do so, is impeding the Home Office from pursuing its inquiries which could have a real impact on the way in which prisoners are managed in custody.

7.131 In order to effectively manage and support the rehabilitation of FNPs and immigration detainees, it is necessary for HMPPS to establish whether they will be released into the community in the UK or abroad, so that an appropriate support plan may be put in place and so prison resources (including programmes) can be targeted appropriately. It is therefore necessary for FNPs and immigration detainees to comply with Home Office efforts to establish/confirm their identity, nationality, and entitlement to remain in the UK.

7.132 In this context a prison officer can give a direct order to a FNP to attend the interview, provide finger prints or return a form, where it is within that prisoner's power to do so. If the prisoner failed to do so then a charge could be laid against the prisoner under either PR 51 (22)/YOI R 55 (25) – disobeys any lawful order or PR 51 (23)/YOI R 55 (26) – disobeys or fails to comply with any rule or regulation applying to him. Refusal to attend a pre-arranged interview might also be classified as falling under rule PR 51 (18)/YOI R 55 (20) -absents himself from any place (where) he is required to be or is present at any place where he is not authorised to be. If a finding of guilt is made in respect of such charges, the adjudicator would then have the option of a range of punishments, including making an order for the removal of privileges.

7.133 It would not be appropriate to use the adjudication process to deal with issues such as the provision to the Home Office of evasive or misleading or inaccurate information.

Unauthorised Photographs/Use of Social Media

7.134 A disciplinary charge can only be brought in cases where photographs, videos or sound recordings are taken or recorded of prisoners in prison and are posted on social networking sites (or which appear in other forms of media), or any other instance of prisoners interacting directly with social media (e.g. status updates, commenting or 'reacting' to any content) if a local document exists. This document should make it clear that prisoners must not permit photographs, videos or sound recordings to be taken/recorded of themselves in prison, and/ or allow a photograph, video or sound recording taken/recorded in prison to be published on any social networking sites, or to directly interact with social media in any way. Governors are asked to ensure that a local document is in place and is appropriately communicated to prisoners. All incidents of prisoners accessing social media should be reported to the Digital Media Investigations Unit (DMIU) at DMIUSPOC@justice.gov.uk. The DMIU can also support with providing evidence for use in internal or external proceedings and assist with removing offensive or unlawful content.

7.135 An appropriate form of words, to help form the local document, would be: *"You must not permit an unauthorised photograph, video or sound recording (which is a photograph, video or sound recording that has been taken/recorded without the prior approval of the Governor) to be taken/made of you whilst in HMP [Name of prison] or any other prison and/or allow a photograph, video or sound recording taken/recorded in HMP [Name of prison] or any other prison to be published by any person on any social networking site, or to directly interact with*

social media in any way. Failure to comply with this rule will result in disciplinary charges being brought against you."

7.136 Where a prisoner has taken a picture, video or sound recording within a prison, the appropriate charge would be under PR 51 (12) or YOI R 55 (13) possession of an unauthorised article.

7.137 If a prisoner has allowed a picture, video or sound recording to be taken or recorded of themselves, they may be charged with failing to comply with any local rule or regulation (PR 51 (23) or YOI R 55 (26)).

7.138 Other disciplinary offences may also be relevant depending on the circumstances. For example, if a prisoner has been given a copy of a photograph and then gives it to someone else without permission, a disciplinary charge under PR 51(14) or YOI R 55 (15) might be appropriate – sells or, without permission, delivers to any person any article which they are allowed to have only for their own use.

7.139 Considerations:

- Was there a rule or regulation operating in the prison or YOI?
- Was the rule or regulation lawful, i.e., a rule under the Prison Act 1952, a Prison or YOI Rule, a national instruction (Prison Service Order or Instruction), or a local regulation which staff were authorised to impose as part of their duties to keep prisoners in custody and to maintain order, discipline, and safety?
- Did the rule or regulation apply to the accused prisoner?
- Was the prisoner aware that the rule or regulation applied to them, or had staff taken reasonable steps to make the prisoner aware of it? 'Reasonable steps' may include notices displayed where the prisoner could see them (bearing in mind any language difficulties the prisoner may have had or disabilities), or information or training given as part of induction or on other occasions, e.g., safety or hygiene regulations relating to the prisoner's employment in a workshop or kitchen etc.

7.140 If the prisoner puts forward a defence of not understanding what was required, did not believe the rule or regulation was personally applicable, or believed that it was not lawful, or any other excuse, the adjudicator should consider whether this explanation was reasonable in the circumstances.

PR 51 (23A), YOI R 55 (26A) fails to comply with any payback punishment

'At (time) on (date), you failed to adequately comply with a requirement to complete your payback punishment, by [failing to attend x day(s)/failing to engage with the payback punishment], without satisfactory reasons.'

7.141 'Failed to adequately comply with a requirement to complete a 'payback punishment' means that the prisoner has either not attended, did not participate, or was being disruptive or actively hindering the project for themselves or for others, possibly leading to their early removal from the payback punishment session(s). These expectations should have been set out in the compact they agreed to and signed. Staff should consider first giving one warning to the prisoner before laying a charge.

7.142 If this charge is proven, governors should consider whether the prisoner's attendance and engagement to date indicates that a further period of payback punishment as a consequence

for this charge would be likely to continue to support their rehabilitation, or whether an alternative punishment would be more appropriate and effective.

7.143 Considerations:

- What has the prisoner's overall attitude and engagement been like? Have they wilfully and persistently failed to engage with the payback punishment, or have they demonstrated a positive attitude and engagement with some or all of their payback punishment until now?
- To date, what proportion of their payback punishment has the prisoner completed? How much time has passed since the punishment was imposed, and what is the proportion completed compared to the number of hours the prisoner has been instructed to attend so far?
- Taking into account evidence from the prisoner, wing staff, staff monitoring a specific project, and any witnesses, does it appear that the payback punishment has started to have the intended effect on the prisoner's behaviour or outlook?
- Does the prisoner have any satisfactory reasons for failing to attend or engage with their payback punishment session(s) leading to this charge? Evidence of individual circumstances or characteristics which may have impeded their engagement should be considered, and whether any reasonable adjustments that were required were adequately put into place to enable their engagement.

PR 51 (24) / YOI R 55 (27) receives any controlled drug, pharmacy medicine, prescription only medicine, psychoactive substance or specified substance or, without the consent of an officer, any other article, during the course of a visit (not being an interview such as is mentioned in PR 38 /YOI R 16)

'At (time) on (date) during the course of your visit you received an article believed to be a controlled drug, pharmacy medicine, prescription only medicine, psychoactive substance or specified substance (or 'an article, namely (describe article), without the consent of an officer.')

7.144 'During the course of a visit' means the period from when the prisoner and visitor first meet until the visitor leaves the visits area. If the alleged article is found after the visit but not in the visits or post-visits searching area, or there is any other reason to doubt that it was received during the visit, a charge under PR 51 (12)(a)/YOI R 55 (13)(a) may be more appropriate. But CCTV/Pin Phone/BWVC evidence may support a charge under PR 51 (24)/YOI R 55 (27).

7.145 'Rule 38 /16' refers to visits from the prisoner's legal advisers.

7.146 Considerations:

- Did the accused prisoner receive a controlled drug, pharmacy medicine, prescription only medicine, psychoactive substance, or specified substance or, without the consent of an officer, any other article, during a visit (other than legally privileged material received during a visit from a legal adviser as allowed under PR 38 and 39 /YOI Rule 16 and 17)? If the drug, medicine, substance, or other article was not found during a search prior to the prisoner entering the visits area, but was found during or shortly after the visit, it may be inferred that the prisoner received it during the course of the visit. CCTV/Pin Phone/BWVC evidence, evidence of staff supervising the visits area, or admissions by visitors may support a finding that the drug or other article was received during the visit. The item may not necessarily be received from a visitor, but

if it is received from another prisoner (or other person) the charge may still be proved if it was received during the course of a visit. If there is doubt about the time at which the article was received, consideration might be given to laying a charge under rule 51(12)/YOI Rule 55(13) instead.

- Was the prisoner aware that the item received was a controlled drug, pharmacy medicine, prescription only medicine, psychoactive substance, or specified substance or, if another article, that they did not have the consent of an officer to receive it? The prisoner's actions following receipt of the item, i.e., attempting to conceal it, will be relevant in deciding whether they were aware that it was a drug or unauthorised item.

7.147 If the prisoner presents a defence of not knowing that the item was a controlled drug, pharmacy medicine, prescription only medicine, psychoactive substance or specified substance or that they did not know that the consent of an officer was needed before receiving any other item, or that the officer had consented, the adjudicator should consider whether such an explanation or belief is reasonable in the circumstances.

PR 51 (24A) / YOI R 55 (28) displays, attaches or draws on any part of a prison / young offender institution, or on any other property, threatening, abusive or insulting words, drawings, symbols or other material, which demonstrate, or are motivated (wholly or partly) by, hostility to persons based on them sharing a protected characteristic

'At (time) on (date) in (place) you displayed, attached or drew threatening, abusive or insulting words, drawings, symbols or other material aimed towards (name of person or group), namely by writing graffiti saying (quote words written) (or 'by drawing a picture/symbol (describe image)'), which demonstrate, or are motivated (wholly or partly) by, hostility to (name of person/people) based on them sharing the protected characteristic of (name of protected characteristic/s).

7.148 The protected characteristics are listed in paragraph 7.7 above.

7.149 Refer to paragraphs 7.13 and 7.14, and paragraphs 7.15-7.21 for definitions of each protected characteristic.

7.150 There is no general equivalent to this charge. If a prisoner displays, attaches or draws material which is threatening, abusive or insulting, but without the protected characteristic element, a charge under PR 51 (20) or (17)/YOI R 55 (22) or (18) may be appropriate.

7.151 Considerations:

- Did the accused prisoner display, attach or draw on any part of a prison/YOI, or on any other property, the words, drawings, symbols, or other material set out in the charge, which were threatening, abusive, or insulting?

- Did the prisoner's actions demonstrate, or were they motivated wholly or partly, by hostility towards persons sharing a protected characteristic?

7.152 If a prisoner puts forward the defence of believing that the behaviour or material etc. was not threatening, abusive or insulting, against a person's protected characteristic, the adjudicator should consider whether this belief was reasonable in the circumstances.

PR 51 (25) / YOI R 55 (29) (a) attempts to commit, (b) incites another prisoner / inmate to commit, or (c) assists another prisoner / inmate to commit or to attempt to commit, any of the foregoing offences

7.153 The charge must specify whether (a), (b) or (c) applies, and refer to the relevant paragraph number of the 'foregoing offence'. For example:

- *'At (time) on (date) in (place) you attempted to escape from HMP (name of establishment) by climbing the fence (etc.), contrary to Prison Rules 51 (25)(a) and 51 (7).'*
- Or*, 'At (time) on (date) in (place) you incited (name of another prisoner) to assault (name of intended victim) by saying (quote words used), contrary to Prison Rules 51 (25) (b) and 51 (1).'*
- Or, *'At (time) on (date) in (place) you incited (names) to disobey a lawful order to leave the exercise yard, contrary to Prison Rules 51 (25) (b) and 51 (22)'.*
- Or, *'At (time) on (date) in (place) you assisted (name) to construct a barricade so as to deny access to their cell, contrary to Prison Rules 51 (25) (c) and 51 (3).'*

7.154 Since 'any of the foregoing offences' includes 'commits any assault', a charge of attempting to commit an assault may be appropriate under the Prison or YOI Rules if, for example, a prisoner tries to punch someone but the intended victim sidesteps before the punch connects, or a prisoner throws a missile at someone but misses. However, some IAs have been unwilling to accept such charges, pointing out that under the criminal law an action that causes fear in the victim is regarded as an assault, even if no unlawful force was actually applied. In such circumstances a charge of using threatening behaviour may be more suitable than attempted assault.

7.155 Considerations:

(a) attempts to commit

- Did the prisoner act in a way that demonstrated preparation to commit any of the foregoing offences, or was the intention to commit any of those offences demonstrated whether or not it may have been possible to succeed? For example, collecting items in preparation for an escape attempt, or climbing part way up the perimeter fence before being stopped. Or concealing an adulterated sample in preparation for obstructing staff conducting an MDT.

(b) incites another prisoner to commit

- Did the accused prisoner seek to persuade one or more other prisoners to commit any of the foregoing offences? It is immaterial whether or not the other prisoner(s) actually did anything in response to the accused prisoner's incitement. The adjudicator only has to consider whether the accused prisoner's actions (whether words, suggestion, persuasion, threats, pressure, or any other form of incitement) were capable of inciting (an) other prisoner(s) to commit an offence and were communicated to that/those prisoner(s).

(c) assists another prisoner to commit

- Has another prisoner been charged with committing, or attempting to commit, any of the foregoing offences?

- Did the accused prisoner do anything that helped the other prisoner to commit, or attempt to commit, that offence? This means performing an act to help the other prisoner, not merely standing by and letting the other prisoner commit or attempt to commit the offence (for cases of assisting another prisoner to escape or attempting to escape, see section 39 of the Prison Act 1952, as amended by the Offender Management Act 2007 – a person convicted under this section may be sentenced to up to ten years imprisonment)
- Did the accused prisoner intend to help the other prisoner? Did the accused prisoner understand that the other prisoner was committing or attempting to commit an offence?

7.156 If the other prisoner is found not guilty of the charge against them, the accused prisoner would have a defence that whatever they had allegedly done had not helped the other prisoner to commit a proven offence.

Further guidance on charging for specific incidents

Incidents at Height

7.157 When laying charges for incidents at height, there are a number of potential charges, some of which include:

- PR 51 (22)/YOI R 55 (25) - disobeying a lawful order - where a member of staff at the scene has given the prisoner any instruction not to climb or to return to the landing/ground level and the prisoner has failed to do so. It is essential that prisoners are given clear and repeated direct orders to desist from their action, and that this is recorded.
- PR 51 (18)/YOI R 55 (20) - absents himself from any place (where) he is required to be or is present at any place where he is not authorised to be - where a prisoner has accessed any area at height which is out of bounds and clearly signed as such.
- PR 51 (23)/YOI R 55 (26) - disobeys or fails to comply with any rule or regulation applying to him - where a prisoner has been informed – for example during induction that this type of behaviour is unacceptable and must not occur and that any breach could lead to a charge. The local rule or regulation must make clear which areas of the prison are prohibited.

7.158 The presence of signs (notices) can be used as part of the charge and evidence at the adjudication hearing; local notices may be displayed to re-iterate this requirement not to access areas at height (local notices are considered to be lawful orders even if those staff present at an incident do not issue a direct order).

Smoking related charges

7.159 Governors are advised to treat non-compliance with their smoke-free policy on a case-by-case basis with consideration given to alternative measures such as informal warnings, review of incentive level and the prisoner's treatment needs and intention. The following factors will also be relevant:

- Type of prison - a therapeutic prison would have different stance than a local prison.
- The prison's priority in dealing with non-compliance, for example awarding CC for a prisoner who is a tobacco dealer may be justified if that prisoner's actions generated more serious issues for the prison.

- Nature of offence and if repeat offence
- Prisoner's previous adjudication history
- Any mitigating factors that the prisoner raises.

7.160 A range of charges may be appropriate, for example: PR 51 (12)/YOI R (13) - has in his possession (a) any unauthorised article; or (b) a greater quantity of any article than he is authorised to have; PR 51 (23)/YOI R 55 (26) - disobeys or fails to comply with any rule or regulation applying to him - in this case a Rule can include a local rule which must have been brought to the prisoner's attention with sufficient notice and prominence so that they were aware of it, they know how it impacts on them, and the likely consequences of breaching it. This could include reference to unauthorised tampering of a device to use for smoking, for example. See the Smoke Free Policy Framework for further details.

Prisoners assisting in drone related activity

7.161 Prisoners involved in criminal activities using drones must be referred to the Police. Where a police referral is not appropriate for prisoners who play a more minor role in assisting the main operators of drone-related offences, the following disciplinary offences might be relied upon depending on the individual circumstances:

- PR 51 (12)/YOI 55 R (13) - has in his possession (a) any unauthorised article; or (b) a greater quantity of any article than he is authorised to have;
- PR 51 (13)/YOI R 55 (14) - sells or delivers to any person any unauthorised article, and;
- PR 51 (25)/YOI R 55 (29) (a) - attempts to commit, (b) incites another prisoner/inmate to commit, or (c) assists another prisoner/inmate to commit or to attempt to commit, any of the foregoing offences.

Body scanner related charges

7.162 A range of charges may be appropriate for body scanner related charges, where a prisoner is found to be secreting any items internally or refuses to engage in the establishment's body scanner process.

- PR 51 (12)(a)/YOI R 55 (13)(a) – has in his possession (a) any unauthorised article – where the prisoner hands over the article or it is recovered and can be associated with the prisoner
- PR 51 (22)/YOI R 55 (25) – disobeys any lawful order – if the prisoner refuses to go on the body scanner or refuses to keep still during the scan
- PR 51 (23)/YOI R 55 (26) – disobeys or fails to comply with any rule or regulation applying to him – if there is a positive scan but the prisoner refuses to hand the article over or dispose of it. In order for this charge to be used, establishments need to amend their local rules to include prohibiting the secretion of any item within the body. For further guidance, please see the Use of X-ray body scanners (adult male prisons) Policy Framework.

Individual punishments

Caution - PR 55 (1) (a) and (2) / YOI R 60 (1) (a) and (3)

7.163 A caution will be appropriate when a warning to the prisoner seems sufficient to recognise the offence and discourage its repetition. It may not be suspended or combined with any other punishment for the same charge, including activation of a suspended punishment.

Forfeiture for a period not exceeding 42 / 21 days of any of the privileges under rule 8 / 6 – PR 55 (1)(b) / YOI R 60 (1)(b)

7.164 This means loss of privileges granted under the local Incentives scheme, (or the Youth Custody Service's Building Bridges Policy Framework). Adjudicators must specify on the record of hearing which privileges the prisoner is to forfeit, and for how long. The maximum period of forfeiture is 42 days for adults or 21 days for young offenders.

7.165 If the forfeited privileges include a higher rate of pay or access to private cash (e.g., to buy items from the prison shop), and the establishment operates a computer-based pay or shop purchasing system, the punishment should be applied as soon as the system allows. Otherwise, it should be applied as soon as it is imposed.

7.166 This punishment does not allow prisoners to forfeit anything that must be provided or allowed under the Prison/YOI Rules (i.e., things that are 'statutory' rather than a privilege). Prisoners should be allowed to buy postage stamps and PIN-phone credits, and to make calls to maintain family contact or contact legal advisers, unless the offence was linked to abuse of the phone system. Access to the gym under PR 29/YOI R 41 should not be forfeited, although additional access under the incentives scheme may be lost. Visits entitlement under PR 35/YOI R 10 must not be forfeited. In-cell televisions may be forfeited, but not normally radios, newspapers, magazines, notebooks, attendance at education, or religious activities.

7.167 In Open prisons, smoking is facilitated in the outside environment. This is because open prisons represent an exception to the general position in Prison Rule 25(2) that no prisoner shall be allowed to smoke, unless otherwise directed by the Secretary of State. In these establishments, possession of tobacco and smoking are privileges under Prison Rule 8, and can be forfeited. However, all governors must ensure that smoking cessation products, e cigarettes/vaping devices/nicotine replacements therapy products are not removed from a prisoner as a form of punishment, nor are they prevented from purchasing them (provided the prison ensure that the prisoner can only purchase the weekly amount as per their facility list). Preventing prisoners from accessing smoking cessation equipment can affect the prisoner's mental and physical health, and this may lead to the prisoner placing themselves in future financial hardship.

7.168 Any review of a prisoner's incentive level must be dealt with separately from the adjudication procedure. An adjudicator may not downgrade a prisoner's incentive level as an adjudication punishment. (Note – legal advice has confirmed that an incentive level review following a separate adjudication punishment is not double jeopardy).

7.169 The governor may wish to consider the appropriateness of this punishment if the prisoner had previously had their incentive level downgraded as a result of the same incident. The governor may wish to take into account any privileges already lost when making a decision about what punishment to impose, to ensure that the overall response to bad behaviour is proportionate. Further information can be found in the Incentives Policy Framework.

Exclusion from associated work for a period not exceeding 21 days PR 55 (1) (c)

7.170 This punishment only applies to adults. It is different to forfeiture of the privilege of time out of cell for association under the previous rule. Prisoners serving this punishment remain on normal location but may not do any work in association with other prisoners. They should not

lose any other privileges (unless a separate punishment under the previous rule has also been imposed), other than those incompatible with the punishment under this rule.

Removal for a period not exceeding 21 days from any particular activity or activities of the young offender institution, other than education, training courses, work and physical education in accordance with rules 37, 38, 39 ,40 and 41 – YOI R 60 (1) (c)

7.171 This punishment only applies to young offenders. The rule itself explains what activities prisoners will continue to take part in. They may be removed from any activity not excluded by the rule.

7.172 Adjudicators should ensure that combining punishments of forfeiture of privileges and exclusion from associated work or activities does not amount to CC by another name. The combined punishment should be differentiated from CC by being served on normal location rather than in segregation and should not exceed the CC maximums of 21 or ten days.

Extra work outside the normal working week for a period not exceeding 21 days and for not more than two hours on any day – YOI R 60 (1) (d)

7.173 Another punishment only applicable to young offenders, which again explains itself. The extra work should be carried out a normal pace.

Stoppage of or deduction from earnings for a period not exceeding 84 / 42 days PR 55 (10 (d) / YOI R 60 (1) (e)

7.174 The adjudicator will specify the percentage of earnings to be lost, up to 100% (less the cost of postage stamps and PIN phone credits, as above), and the number of days this is to continue – maximum 84 days for adults, 42 days for young offenders. The pay to be lost includes gross prison earnings during the period of the punishment (normal pay and performance related or piece rate earnings) but excludes bonuses for exceptional or additional work. The stoppage or deduction should be based on the amount the prisoner actually earned during the period of punishment and not based on average earnings.

7.175 If the establishment uses a computer-based pay calculation system the stoppage or deduction should be applied as soon as the system allows. Otherwise, it should be applied as soon as the punishment is imposed.

7.176 As indicated at paragraph 7.91, in cases where prisoners have intentionally destroyed or caused damage to a prison or to prison property, they may be subject to a requirement to recompense the prison for the cost of replacing these items or property. However, this should not be seen as part of a punishment but simply a way of recovering the costs of making good the damage. The details of this can be found in paragraphs 6.108-6.127.

Cellular confinement for a period not exceeding 21 days PR 55 (1) (e) and (3)

In the case of an offence against discipline committed by an inmate who was aged 18 or over at the time of commission of the offence, other than an inmate who is serving the period of detention and training under a detention and training order pursuant to section 100 of the Powers of Criminal Courts (Sentencing) Act 2000, confinement to a cell or room for a period not exceeding ten days – YOI R 60 (1) (f) and (2)

7.177 The Prison Rule means an adult prisoner may be given CC for up to 21 days for a single offence, or consecutive punishments adding up to 21 days for a number of offences arising from a single incident. The YO Rule means that if the inmate was 18 or above at the time of the offence, and is not serving a DTO, a punishment of CC or confinement to a room for up

to ten days for a single offence or consecutive punishments adding up to ten days for a number of offences arising from a single incident may be given.

7.178 If an adult prisoner is serving the maximum punishment of 21 days CC and is then found guilty of a further offence, another punishment of up to seven days CC may be imposed, bringing the total up to 28 days. If, during this period, the prisoner is found guilty of a third offence, up to another seven days may be imposed, bringing the total up to 35 days.

7.179 In the case of a young offender serving the maximum ten days for a first offence, who is then found guilty of a second and third offence, up to three more days CC may be imposed for each offence, bringing the totals up to 13 then 16 days.

7.180 On each occasion adjudicators should consider whether further CC will be an effective punishment, and whether an alternative punishment might be more appropriate, particularly if the prisoner is vulnerable. For the fourth or any subsequent offences the adjudicator will consider alternative punishments as it is not possible to impose further CC while the punishment is still being served.

7.181 If a prisoner appears to be committing offences with the intention of remaining in CC so as to avoid returning to normal location, the aim should be to address whatever problems the prisoner may have on the wing, rather than continually imposing punishment.

7.182 Whenever the adjudicator is considering imposing a punishment of CC, including a suspended punishment, arrangements are to be made for a doctor or registered nurse to complete an Initial Segregation Health Screen, (in line with Prison Rule 58/YOI Rule 61(1). The adjudicator must take account of any medical advice that CC would not be an appropriate punishment for the prisoner on this occasion (e.g., because the prisoner is vulnerable and liable to self-harm), and should either consider a different punishment, or note on the record of hearing the reasons for deciding nevertheless to impose CC. A further ISHS must be completed if it is decided to activate a suspended punishment of CC (since the change of circumstances may affect a vulnerable prisoner differently to the initial suspended punishment).

7.183 CC may be served in an ordinary cell set aside for the purpose, not necessarily in the segregation unit. A bed and bedding, a table, and a chair or stool must be provided and must not be removed as a punishment. There must be access to sanitary facilities at all times. Other furnishings and fittings may be provided at the Governor's discretion.

7.184 In the case of young offenders any cell or room used for this punishment must be certified as suitable for the purpose - see YOI R 61 (2).

7.185 Prisoners serving CC will be allowed all normal privileges other than those incompatible with the punishment (unless a separate, concurrent punishment of forfeiture of privileges has also been imposed). Compatible privileges will usually include a reasonable number of personal possessions, books, cell hobbies and activities, entering public competitions, and wearing own clothes and footwear where already allowed. Use of private cash and purchases from the prison shop will also be compatible where deliveries are made direct to the prisoner. Prisoners will continue to be able to correspond, exercise, attend faith/belief services, make applications to the Governor, probation officer, chaplain and IMB, and have access to a phone, unless their attitude or behaviour makes it impractical or undesirable to remove them from the cell. Visits should take place separately from other prisoners. A member of the Chaplaincy Team must visit prisoners in the Segregation Unit daily. It is a statutory duty to visit all prisoners undergoing CC - please see PSI 05/2016 Faith and Pastoral Care for Prisoners - Section 13 about prisoners on CC.

7.186 Prisoners in CC must be observed according to the requirements set out in PSO 1700 Segregation, and the healthcare unit and chaplain must be notified daily of prisoners in CC.

7.187 The day CC is imposed counts as the first day of punishment, and the prisoner may be returned to normal location at any time during the last day (i.e., the first and last days need not be whole days).

In the case of a prisoner otherwise entitled to them, forfeiture for any period of the right, under rule 43 (1), to have the articles there mentioned PR 55 (1) (g)

7.188 This punishment only applies to unconvicted prisoners who, under PR 43 (1) may pay to be supplied with, and keep in possession, books, newspapers, writing materials, and other means of occupation, other than any that the IMB or Governor object to. They may be punished by forfeiting these items for any period the adjudicator may decide.

Removal from his wing or living unit for a period of 28 / 21 days PR 55 (1) (h) / YOI R 60 (1) (g)

7.189 Removal from wing or unit means that the prisoner or young offender (including people under 18) is relocated to other accommodation within the establishment (i.e., away from friends and familiar surroundings), but otherwise continues to participate, as far as possible, in normal regime activities, in association with other prisoners or inmates. The prisoner should not normally lose any privileges, unless a separate punishment of forfeiture of privileges has been imposed.

7.190 The maximum periods for this punishment are 28 days for adults and 21 days for young offenders, but under 18s are only likely to merit the maximum exceptionally.

7.191 Removal from wing should not normally be served in a segregation unit, but if, exceptionally, no other accommodation is available the normal segregation procedures, including completion of an Initial Segregation Health Screen, must be followed.

Payback punishment PR 55(1)(i) / YOI R 60(1)(i)

7.192 Payback punishment means the prisoner is required to complete unpaid time-limited project(s) in the prison, that are outside of business-as-usual activities and allocations, as directed by the governor. The projects must be rehabilitative and/or reparative in nature. The governor should consider imposing this punishment when they identify that the prisoner may need to make amends for their behaviour, which can be supported through the completion of rehabilitative or reparative projects to benefit the community.

7.193 The maximum period of payback punishment that can be imposed is 12 hours (not necessarily consecutive) for both young offenders and adult prisoners.

Annex A – Forms, Flow Charts and Chief Magistrate's Sentencing Adjudication Guidelines

All adjudication forms and flow charts can be found on main page on gov.uk where this Policy Framework is published - here

Document	Information/Purpose
Flowcharts	
Basic Adjudication process	To demonstrate the adjudications process in a visual form
Virtual IA process	
Independent Adjudications: referral back to governors	
Payback Punishment	
Rehabilitative Activity Conditions	
DIS forms	
DIS1	Notice of report
DIS2	Prisoner adjudication information sheet and prisoner's statement
DIS2 Easy Read	Easy Read - Prisoner adjudication information sheet and prisoner's statement
DIS3	Record of adjudication hearing
DIS4	Record of hearing continuation sheet
DIS5	Adjudication report
DIS6	Conduct report for adjudicator
DIS7 (adult) and DIS7 (YOI)	Adjudication result
DIS8	Request for a review of an adjudication heard by a Governor or Director
DIS9	Application for remission of additional days
IA forms	
IA1	Referral to the Independent Adjudicator (IA)
IA2	Prisoner transfers (IA cases)
IA3	Outcome of adjudications conducted by an IA
IA4	Request for a review of an adjudication punishment heard by an IA
IA5	Informing prisoners of their IA hearing and requests for legal advice/representation
Other forms	
Refusal to attend hearing	Refusal to attend form for governor and IA hearings
MR1	Notice of minor report
Prisoner notification of recovery of monies	To inform a prisoner following a notification regarding the recovery of monies being made
Rehabilitative Options User Guide and Compacts	
User Guide	User guide on the rehabilitative options (payback punishment and rehabilitative activity conditions) to support staff with implementing these
Payback punishment compact	A compact, in which the payback punishment activities given to the prisoner should be detailed, along with the expected behaviours and standards the prisoner must meet.
Rehabilitative activity compact	A compact, in which the rehabilitative activities given to the prisoner should be detailed, along with the expected behaviours and standards the prisoner must meet.
Other documents	
List of acronyms	Acronyms covered in the policy
Chief Magistrate's Sentencing Adjudication Guidelines	Guidelines set by the Chief Magistrate for awarding added days as a punishment in independent adjudications

Annex B – List of Amendments

The following table sets out the main changes introduced in this Policy Framework.

Policy change	Paragraph numbers
Significant changes	
Amended charges and charging considerations now referring to all protected characteristics	7.7-7.21, 7.92-7.96, 7.109-7.115, 7.148-7.152
Damages compensation payments	4.77-4.82, 6.110-6.111, 6.113-6.118, 6.123, 6.216, 7.176
New charges	7.22-7.28, 7.141-7.143
Payback punishment	4.54-4.72, 6.170-6.188, 7.192-7.193
Rehabilitative activity conditions	6.141-6.157
Suspended punishments	6.138-6.140
Other changes	
Accused prisoner's fitness for hearing	6.27-6.28
Additional days – sentence calculation	4.75
Body scanner related charges	7.162
BWVC evidence	6.45
Charges and guidance for proving individual offences	7.2
Considerations relating to damages charge	7.87, 7.91
Considerations relating to drug and alcohol charges	7.53-7.55, 7.65
Considerations relating to escape and abscond charge	7.43-7.44
Considerations relating to possession charge	7.67, 7.70
Discretionary Friday/pre-Bank Holiday Releases Scheme	4.76, 6.165, 6.239
Dismissed and not proceeded with	4.34, 4.48-4.50
Hearings in a prisoner's absence	6.32-6.34
Hearing procedures	6.42
Hearing procedures - witnesses	6.93-6.95
Hearsay evidence and prisoner's defence	6.98, 6.100
IAs entering prisons	6.88
Incentives	7.169
Informing the prisoner of the punishment	6.133-6.137
ISHS	4.29, 4.73
Judicial reviews	6.223-6.224, 6.226
Laying a charge on DPS	4.12-4.13
Legal advice and legal representation	4.18-4.19, 4.23, 6.46
Management oversight	6.241, 6.243-6.244
Minor reports	6.190, 6.193
Mitigation, conduct report and adjudication report	6.130, 6.132
Post hearing procedures	6.199-6.200
Prisoners with specific needs and difficulties	6.21-6.24
Punishments	4.51-4.53, 6.128
Referral to an IA	6.58-6.59, 6.62-6.63, 6.65-6.66, 6.72-6.73, 6.75, 6.77, 6.80, 6.85
Rehabilitative skills	6.39
Remission of added days	6.166, 6.237
Retention of records	6.245
Review of adjudications heard by governors	6.204-6.205
Self-harm	6.15
Transfers before hearing is commenced or concluded	6.29
Updated forms and flow charts	Annex A
Unauthorised photographs and use of social media	7.134-7.137
Victims	6.36-6.37